

5600-22  
H.C.

IN THE  
**United States Court of Appeals for the  
District of Columbia**

**APRIL TERM, 1941**

---

**No. 7929**

**AMERICAN MEDICAL ASSOCIATION, A CORPO-  
RATION, APPELLANT,**

**vs.**

**UNITED STATES OF AMERICA, APPELLEE**

---

**No. 7930**

**THE MEDICAL SOCIETY OF THE DISTRICT OF  
COLUMBIA, A CORPORATION, APPELLANT,**

**vs.**

**UNITED STATES OF AMERICA, APPELLEE**

---

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLUMBIA**



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1. [Stamp:] Filed in open court Dec. 20, 1938.  
Charles E. Stewart, Clerk.

**DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF COLUMBIA, HOLDING A CRIM-  
INAL TERM**

Criminal No. 63221

OCTOBER TERM, A. D. 1938

UNITED STATES OF AMERICA,  
District of Columbia, ss.:

**Indictment**

The Grand Jurors of the United States of America, at a regular term of the District Court of the United States for the District of Columbia, to wit: the October 1938 term thereof, held at Washington, in the District of Columbia, after being duly impanelled, sworn, and charged at the term of court aforesaid, as an additional Grand Jury in and for said District, inquiring for the said District, upon their oaths find and present, as follows:

**I. The Defendants**

1. The following corporations and associations are hereby made defendants:

(1) American Medical Association; incorporated under the laws of Illinois and having its office and principal place of business in Chicago, Illinois;

(2) The Medical Society of the District of Columbia, incorporated under an Act of Congress and having its office and principal place of business in the District of Columbia;

2 (3) Harris County Medical Society, an unincorporated association, having its office and its principal place of business in Houston, Harris County, Texas;

(4) Washington Academy of Surgery, an unincorporated association, having its office and its principal place of business in the District of Columbia.

2. The following individuals, who will be referred to hereinafter as "the individual defendants," are hereby made defendants:

Arthur Carlisle Christie  
Coursen Baxter Conklin

James Bayard Gregg Custis  
 William Dick Cutter  
 Morris Fishbein  
 Thomas Allen Groover  
 Robert Arthur Hooe  
 Roscoe Genung Leland  
 Leon Alphonse Martel  
 Thomas Ernest Mattingly  
 Francis Xavier McGovern  
 Thomas Edwin Neill  
 Edward Hiram Reede  
 William Mercer Sprigg  
 William Joseph Stanton  
 John Ogle Warfield, Jr.  
 Olin West  
 Prentiss Willson  
 William Creighton Woodward  
 Wallace Mason Yater  
 Joseph Rogers Young

## II. The Washington Hospitals

3. Each of the following corporations and associations  
 were engaged in the business of operating a hospital  
 3 throughout the period of the conspiracy hereinafter  
 described:

Central Dispensary and Emergency Hospital  
 Children's Hospital of the District of Columbia  
 Columbia Hospital for Women  
 Eastern Dispensary and Casualty Hospital  
 Episcopal Eye, Ear and Throat Hospital  
 Garfield Memorial Hospital  
 Georgetown University Hospital  
 George Washington University Hospital  
 National Homeopathic Hospital of the District of Colum-  
 bia.  
 Providence Hospital  
 Sibley Memorial Hospital  
 Washington Sanitarium and Hospital

These hospitals are located in Washington in the District of Columbia, except that the Washington Sanitarium and Hospital is located in Takoma Park, Maryland. The hospitals listed in this paragraph will be referred to collectively

hereinafter as "the Washington hospitals." The said hospitals include all of the hospitals in the District of Columbia not operated by the government.

### III. Relationship between Certain Defendants

#### A. Relationship between Defendant American Medical Association and Defendants The Medical Society of the District of Columbia and Harris County Medical Society

4. Membership in defendant American Medical Association is ordinarily obtainable only through affiliated State or territorial medical associations, known as "constituent" associations or societies of American Medical Association. Defendant The Medical Society of the District of Columbia is a constituent medical society of defendant American Medical Association. Membership in most "constituent" associations or societies is ordinarily obtainable only through membership in affiliated county or local medical societies, known as "component" societies of those constituent associations and of the American Medical Association. Defendant The Medical Society of the District of Columbia has no component societies. Defendant Harris County

4 Medical Society is a component medical society of defendant American Medical Association. Members of affiliated component or constituent medical societies are, ipso facto, members of defendant American Medical Association.

#### B. Memberships and Offices Held by Individual Defendants

5. Membership in defendant American Medical Association was held by all individual defendants throughout the period of the conspiracy hereinafter described. For many years, and throughout the period of the conspiracy hereinafter described, the following individual defendants, namely:

Morris Fishbein, Editor of the Journal of the American Medical Association;

Olin West, Secretary and General Manager of the American Medical Association;

William Creighton Woodward, Director of the Bureau of Legal Medicine and Legislation of the American Medical Association;

William Dick Cutter, Secretary of the Council on Medical Education and Hospitals of the American Medical Association;

Rosco Genung Leland, Director of the Bureau of Medical Economics of the American Medical Association,

have been employed by defendant American Medical Association in the positions indicated and, as the principal full-time officials and employees of said defendant Association, have been engaged in the active management of its business affairs and have been largely instrumental in forming and effectuating its policies and, in particular, in managing the business affairs and in forming and effectuating the policies of said defendant Association hereinafter set forth.

6. Membership in defendant The Medical Society of the District of Columbia was held, throughout the period of the conspiracy hereinafter described, by all of the individual defendants except those listed in paragraph 5 of this indictment as employees and officials of defendant American Medical Association.

7. Defendant The Medical Society of the District of Columbia has an executive committee charged with carrying out the policies of the said defendant society.

8. Offices in defendant The Medical Society of the District of Columbia, and membership in the Executive Committee, were held during all or part of the period of the conspiracy hereinafter described by the individual defendants whose names are indicated below:

Thomas Edwin Neill, President, and member of the Executive Committee;

Coursen Baxter Conklin, Secretary-Treasurer, and member of the Executive Committee;

Robert Arthur Hooe, member of the Executive Committee;

Francis Xavier McGovern, member of the Executive Committee;

Edward Hiram Reede, member of the Executive Committee;

William Mercer Sprigg, member and Chairman of the Executive Committee;

Wallace Mason Yater, member of the Executive Committee.



9. Membership on the Hospital Committee of defendant The Medical Society of the District of Columbia was held by the individual defendants listed below during all or part of the period of the conspiracy hereinafter described:

Leon Alphonse Martel  
John Ogle Warfield, Jr.  
Joseph Rogers Young

6 10. Membership on regular or attending staffs of the Washington hospitals was held by individual defendants throughout the period of the conspiracy hereinafter described, as follows:

COURSEN BAXTER CONKLIN, Children's Hospital of the District of Columbia, Eastern Dispensary and Casualty Hospital, George Washington University Hospital.

JAMES BAYARD GREGG CUSTIS, National Homeopathic Hospital of the District of Columbia.

ROBERT ARTHUR HOOE, Central Dispensary and Emergency Hospital.

THOMAS ERNEST MATTINGLY, Sibley Memorial Hospital.

LEON ALPHONSE MARTEL, Georgetown University Hospital.

FRANCIS XAVIER MCGOVERN, Garfield Memorial Hospital.

THOMAS EDWIN NEILL, Episcopal Eye, Ear and Throat Hospital, Garfield Memorial Hospital.

WILLIAM MERCER SPRIGG, Columbia Hospital for Women.

WILLIAM JOSEPH STANTON, Georgetown University Hospital.

7 JOHN OGLE WARFIELD, JR., Children's Hospital of the District of Columbia, Garfield Memorial Hospital.

PRENTISS WILLSON, Columbia Hospital for Women.

WALLACE MASON YATER, Georgetown University Hospital.

JOSEPH ROGERS YOUNG, Eastern Dispensary and Casualty Hospital.

#### IV. The Background of the Conspiracy

11. In the last few decades great and unprecedented advances in medical knowledge and technique have occurred. No single doctor now knows or can know enough medical science to enable him to render complete and adequate medical care. Specialization in the rendition of medical care has necessarily resulted. Costly diagnostic and therapeutic equipment and facilities have now become essential



for the rendition of complete and adequate medical care. The cost of complete and adequate medical care has increased substantially.

12. Many persons embraced within the low income group in the United States, including the District of Columbia, do not now obtain, and cannot now afford to obtain, complete and adequate medical care.

8      13. During the last few decades, many general practitioners and specialists have associated themselves together in group practice in order to reduce the cost and improve the quality of medical care by sharing their knowledge and by making joint use of equipment and facilities. During the last few decades attempts have been made to enable persons in the low income group to meet the cost of medical care on a risk sharing prepayment basis and thus to avoid excessive economic burdens occasioned by the uneven incidence of illness. To achieve these objectives, organizations have been formed in which general practitioners and specialists engaged in group practice undertake to give complete medical care of high quality to persons who pay therefor on a risk sharing prepayment basis.

14. Experimentation with group medical practice on a risk sharing prepayment basis, if not obstructed by coercive restraints, may contribute to the solution of the problem of providing complete and adequate medical care. Many surveys of the problem in recent years have resulted in recommendations for such experimentation. There is reason to believe, and a large body of informed opinion holds, that the supplying of medical care in this manner and on this basis may be so organized as to obtain qualified doctors and to afford those doctors conditions of practice which are conducive to a high quality of medical service satisfactory to both doctor and patient and which enable the said doctors to find satisfaction in their work and to obtain a stable, adequate net income; moreover, that this method of supplying medical care may be utilized without unduly affecting such free choice of physicians as is ordinarily enjoyed by patients and without involving interference on the part of laymen with the medical service or with the relationship subsisting between doctor and patient. There is reason to believe, and a large body of informed opinion holds, that such method of providing medical care is less costly than,

9 and, in many respects from the standpoint of both  
 doctor and patient, superior to, individual practice  
 on a fee for service basis.

15. Principally for economic reasons and because it has  
 feared, for its members, business competition from the doc-  
 tors connected with organizations in which doctors engage  
 in group practice on a risk sharing prepayment basis, de-  
 fendant American Medical Association, and the individual  
 defendants employed by said defendant Association, have  
 adopted and for many years have pursued a policy of oppo-  
 sition to experimentation with such organizations, and have  
 taken affirmative steps to oppose their formation and oper-  
 ation throughout the United States.

#### V. The Dominant Position of Defendant American Medical Association and the Circumstances Affording the Defend- ants, Acting Together, Economic and Other Coercive Power to Restrain Group Medical Practice on a Risk Sharing Prepayment Basis

##### A. The Importance of Membership in Medical Societies, of Consultations, and of Hospital Privileges

16. Membership in a medical society affiliated with de-  
 fendant American Medical Association, and hence in de-  
 fendant American Medical Association itself, is valuable to  
 practicing doctors because such membership carries profes-  
 sional prestige, because defendant American Medical Asso-  
 ciation and affiliated societies provide desirable services for  
 and contacts to members, and because many doctors and  
 many hospitals and others serving the medical profession  
 deal only with such doctors as are members of defendant  
 American Medical Association. Exclusion or expulsion  
 from membership in a medical society affiliated with defend-  
 ant American Medical Association, and hence from member-  
 ship in defendant American Medical Association itself, de-  
 10 privs doctors, including doctors engaged in group  
 practice on a risk sharing prepayment basis, of these  
 advantages and also injures their professional stand-  
 ing.

17. Consultations between doctors are frequently ad-  
 vantageous, both to the patient and to the doctors. Defend-  
 ant American Medical Association recommends that doc-

tors seek consultations with other doctors in cases of serious illness. Consultations with specialists outside of the group is frequently desirable for doctors engaged in group practice on a risk sharing prepayment basis. Doctors, including doctors engaged in group practice on a risk sharing prepayment basis, are seriously handicapped if they are prevented from obtaining consultations.

18. The privilege of attending and treating their patients in a well-equipped hospital is essential for all practicing surgeons. Such privilege is desirable for all practicing doctors. Exclusion from hospitals of surgeons and physicians, including those engaged in group practice on a risk sharing prepayment basis, seriously restrains them in the pursuit of their callings.

19. It is desirable and frequently essential for the successful conduct of the business of organizations engaged in arranging for the provision of medical care by salaried doctors engaged in group medical practice on a risk sharing prepayment basis, and thus for the members of or subscribers to such organizations, that the doctors composing the medical staffs thereof, equally with other doctors, be afforded the opportunity of obtaining, and be not prevented from obtaining, memberships in medical societies, consultations with other doctors, and the use of hospital facilities.

**B. Power of Certain Defendants to Exclude and to Expel Doctors Engaged in Group Practice on a Risk Sharing Prepayment Basis from Membership in Medical Societies**

20. A large percentage of the doctors practicing in the District of Columbia (in excess of 800) are members of defendant The Medical Society of the District of Columbia, and thus of defendant American Medical Association. There are approximately 145,000 doctors engaged in practice in the United States. Approximately 110,000 doctors are members of defendant American Medical Association. Defendant American Medical Association has a gross income of several million dollars a year, and its investments in capital assets have been and are substantial; it employs about 500 persons in the conduct of its business. Defendant American Medical Association is engaged in the business of publishing a weekly magazine

known as The Journal of the American Medical Association, which has a weekly circulation of approximately 95,000; it is the only medical journal with an extensive circulation among the members of the medical profession. The said Journal contains a section entitled "Organization Section," devoted to organizational, business, economic, and social aspects of medical practice. The said Journal has been edited and managed in such a manner as to express the policy of defendant American Medical Association and of the individual defendants employed by it of opposition to group medical practice on a risk sharing prepayment basis and to further the effectuation of such policy of opposition. The columns of said Journal have not been open for the expression of contrary views about group medical practice on a risk sharing prepayment basis. Defendant American Medical Association maintains a bureau known as the Bureau of Medical Economics, which concerns itself with the economic organization of the practice of medicine. The said Bureau of Medical Economics has taken a leading part in carrying out defendant American Medical Association's policy of opposing, discouraging, and suppressing group medical practice on a risk sharing prepayment basis. By reason of its size, organization and activities, defendant American Medical Association is the only important society representative of the medical profession in the United States. The medical profession in the United States and its policies are influenced and to a great extent controlled by defendant American Medical Association.

12      21. Defendant American Medical Association has promulgated certain rules, called by it "Principles of Medical Ethics", which purport to define the duties of doctors in their relations with their patients and among themselves. The constituent and component societies of defendant American Medical Association, including defendant The Medical Society of the District of Columbia and defendant Harris County Medical Society, have adopted and they govern their members by the said "Principles of Medical Ethics". The members of defendant The Medical Society of the District of Columbia are required to, and do, pledge themselves to comply with said principles. These so-called "Principles of Medical Ethics" are expressed in the form of indefinite standards and, as interpreted and applied by defendant American Medical Association and



its affiliated constituent and component societies, are not confined to requirements of ethical, moral, or legal conduct, but embody as well purely economic restrictions upon the practice of medicine. Under these rules, so interpreted, defendant American Medical Association and its affiliated constituent and component societies can, and frequently do, condemn as "unethical" group medical practice on a risk sharing prepayment basis, principally because such practice is in business competition with and threatens the incomes of doctors engaged in practice on a fee for service basis, and particularly of doctors so practicing who are members of defendant American Medical Association and its affiliated constituent and component societies.

22. The affiliated constituent and component societies of defendant American Medical Association, including defendant The Medical Society of the District of Columbia and defendant Harris County Medical Society, act as enforcing agencies of defendant American Medical Association with respect to the "Principles of Medical Ethics". Said constituent and component societies, including defendant The Medical Society of the District of Columbia and defendant Harris County Medical Society, under the supervision and control of defendant American Medical Association, have the power to, and do, suspend, expel, or otherwise discipline

13 members claimed by said defendant societies and association to have violated the "Principles of Medical Ethics". Principally for the reasons hereinabove set forth, defendants American Medical Association, The Medical Society of the District of Columbia, and Harris County Medical Society possess power to expel or exclude from membership a doctor disapproved by them solely because he has associated himself with group medical practice on a risk sharing prepayment basis.

C. Power of Certain Defendants to Restrain Doctors from Engaging in Group Medical Practice on a Risk Sharing Prepayment Basis and to Restrain Doctors from Consulting with Doctors so Engaged.

23. A provision, to wit: Chapter IX, Article IV, Section 5 of the constitution of defendant The Medical Society of the District of Columbia prohibits any professional relationship whatsoever, including consultations, between members of the said defendant Society on the one hand and,

on the other, any doctor, organization or group rendering medical care within the District of Columbia or within ten miles thereof, which doctor, organization, or group has not been "approved" by defendant The Medical Society of the District of Columbia. By reason of this provision, and by reason of the power of defendant The Medical Society of the District of Columbia to exclude applicants for membership, and to suspend, expel, or otherwise discipline its members, under the supervision and control of defendant American Medical Association, said defendants have power to deter doctors from engaging in group medical practice on a risk sharing prepayment basis or from consulting with doctors engaged in such group practice.

**D. Power of Certain Defendants to Restrain Doctors Engaged in Group Practice on a Risk Sharing Prepayment Basis from Obtaining Access to Hospital Facilities**

24. The medical services and the determination of the medical policies of the Washington hospitals are controlled in each such hospital by a medical staff, consisting of doctors appointed thereto by the governing body of the hospital and commonly designated as the "regular" or "attending" staff of the hospital. Doctors on such a

14 "regular" or "attending" staff of a Washington hospital are privileged to treat and operate upon their private patients within that hospital and to use the facilities thereof. Each Washington hospital also has a "courtesy" staff, comprising those doctors, not on its "regular" or "attending" staff, who are permitted to treat or operate on their patients in that hospital. Except in emergency cases, only those doctors who have been appointed to the "attending" or "regular" staff or to the "courtesy" staff of a Washington hospital are permitted to treat or operate on patients within that hospital. Formal appointment to the courtesy staff of each Washington hospital is made by the governing body of that hospital.

25. Applications for appointment to the courtesy staff of each Washington hospital are passed upon by the attending or regular staff of that hospital. Each Washington hospital, acting through its governing body, ordinarily finds it expedient to follow, and ordinarily does follow, the recommendations of its attending or regular staff with respect



to appointments to its courtesy staff. Nearly all members of the attending or regular staff of each Washington hospital are members of defendant The Medical Society of the District of Columbia and of defendant American Medical Association. As such members, they know, and can and do communicate to the Washington hospitals, the policies and wishes of defendant The Medical Society of the District of Columbia and of defendant American Medical Association.

26. Defendant The Medical Society of the District of Columbia has a standing committee, known as the Hospital Committee, composed of a member of the regular or attending staff of each Washington hospital, whose function it is to communicate to the Washington hospitals the policies and wishes of defendant The Medical Society of the District of Columbia, to endeavor to obtain compliance by the Washington hospitals with those wishes and policies, and further, to keep defendant The Medical Society of the District of Columbia informed with respect to compliance by the Washington hospitals with those wishes and policies.

15      27. Defendant The Medical Society of the District of Columbia has approved each of the Washington hospitals located in Washington. Defendant The Medical Society of the District of Columbia, by withdrawing its approval of a Washington hospital, makes a member of the attending or regular medical staff of that hospital who continues to serve on such staff subject to disciplinary action by said defendant society, including expulsion from said society. Simultaneous withdrawal of the members of its regular or attending staff from a Washington hospital, in order to obtain compliance by that hospital with the wishes and policies of the defendant The Medical Society of the District of Columbia, would deprive the hospital of services essential to it, would cause it a loss of prestige, and would thereby seriously injure the said hospital.

28. Defendant Washington Academy of Surgery makes recommendations to some of the Washington hospitals with respect to appointments to their courtesy staffs. In making such recommendations, defendant Washington Academy of Surgery can and does carry out the policies and wishes of defendant The Medical Society of the District of Columbia. The recommendations of defendant Washington Academy of Surgery with respect to such appointments are ordinarily

followed by the regular or attending staff of the Washington hospitals in making recommendations to the governing bodies of such hospitals with respect to applications for such appointments.

29. Medical students and doctors receiving postgraduate training in hospitals, ordinarily known as "interns" and "residents," render valuable services to the hospitals without substantial compensation. Defendant American Medical Association, by means of periodic inspections, determines and declares what hospitals in the United States it believes are suitable for postgraduate training of interns and residents. No other public or private agency rates hospitals for this purpose. In order to obtain credit generally throughout the medical profession for postgraduate training in hospitals, and frequently in order to obtain a medical degree or a license to practice, it is necessary for medical students and doctors to take such training in hospitals which defendant American Medical Association has approved for that purpose. Loss of approval by defendant American Medical Association therefore not only causes a loss of prestige to a hospital, but also ordinarily prevents a hospital from obtaining interns and residents. Inability to obtain interns and residents ordinarily compels a hospital to employ house doctors, at substantial expense.

30. Defendant American Medical Association has adopted the policy that hospitals approved by it for intern and resident training should have on their medical staffs only doctors who are members of defendant American Medical Association.

31. Each Washington hospital is approved by defendant American Medical Association for the training of interns or of residents or of both. The power of defendant American Medical Association to withdraw such approval gives defendant American Medical Association power to enforce compliance by Washington hospitals with the policies and wishes of defendant The Medical Society of the District of Columbia and of defendant American Medical Association.

32. Principally for the reasons hereinabove alleged, defendants American Medical Association, The Medical Society of the District of Columbia, and Washington Academy of Surgery possess power to expel or exclude a doctor, disapproved by them solely because he has engaged in group

medical practice on a risk sharing prepayment basis, from attending and treating his patients in the Washington hospitals, the said Washington hospitals including all the hospitals in the District of Columbia in which private patients may be treated by doctors.

## VI. The Conspiracy

33. Group Health Association, Inc. was incorporated on February 19, 1937, and authorized to do business under and by virtue of the laws of Congress for the District of Columbia. Said corporation is a non-profit, cooperative association of employees of certain departments in the executive branch of the United States Government employed in the District of Columbia. Most members of Group Health Association, Inc., are embraced within the low income group, over 80% of them earning annual incomes of not more than \$2,000. Said corporation is engaged in the District of Columbia in the business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis. Said corporation collects monthly payments in the form of dues from its members. Medical care is provided by a medical staff consisting of salaried general practitioners and specialists engaged in group practice under the sole direction of a medical director. Said corporation pays adequate salaries to the doctors on its medical staff and provides the medical staff with a modern, well equipped clinic, which was opened on November 1, 1937. Said corporation also defrays, within limits, the expenses of hospitalization of its members and their dependents. The personal relationship ordinarily existing between doctor and patient obtains between the doctors on the medical staff of Group Health Association, Inc. and their Group Health Association, Inc. patients.

34. Beginning in January, 1937, or shortly thereafter, and continuing to the date of the presentation of this indictment, the defendants, and certain members of defendant The Medical Society of the District of Columbia not made defendants, and the Washington hospitals, and other persons to the grand jurors unknown, well knowing the foregoing facts, have combined and conspired together for the purpose of restraining trade in the District of Columbia, that is to say:

(1) for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of

medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis;

(2) for the purpose of restraining the members of Group Health Association, Inc. in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis;

(3) for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings;

(4) for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings;

(5) for the purpose of restraining the Washington hospitals in the business of operating such hospitals.

In so doing, defendants have then and there engaged in an unlawful combination and conspiracy in restraint of trade in and of the District of Columbia in violation of Section 3 of the Act of Congress on July 2, 1890, known as the Sherman Antitrust Act.

35. Throughout the period covered by this indictment, Group Health Association, Inc. and its medical staff were discussed at frequent meetings of defendant The Medical Society of the District of Columbia and of committees of said defendant Society, and at other meetings and conferences. At such meetings and conferences, the combination and conspiracy hereinabove described was proposed, discussed, and formed, in part, and carried on in part. Plans, understandings, and agreements to accomplish the unlawful purposes hereinabove described were proposed, discussed and adopted at such meetings. Many of such plans, understandings, and agreements were set forth in formal resolutions adopted by defendant The Medical Society of the District of Columbia, and by the committees thereof. Among such resolutions was the following resolution adopted at a meeting of defendant The Medical Society of the District of Columbia, held in Washington in the District of Columbia, on November 3, 1937:

Whereas, The Medical Society of the District of Columbia has an apparent means of hindering the successful opera-



tion of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals; and

Whereas, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

Whereas, conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict.

Following adoption of the said resolution of November 3, 1937, the combination and conspiracy hereinabove described was further discussed and carried on at later meetings of defendant The Medical Society of the District of Columbia and of committees of said defendant Society, and at other meetings and conferences. Said meetings were held, said resolutions were adopted, and said plans, understandings, and agreements were proposed, discussed, and adopted, with the knowledge, approval and assistance of defendant American Medical Association and of the individual defendants who are employed by defendant American Medical Association.

36. The combination and conspiracy hereinabove described and the intended restraints which have resulted therefrom have been effectuated in the following manner and by the following means, among others, to wit:

(a) Defendants have combined and conspired with the plan and purpose to hinder and obstruct Group Health Association, Inc., in procuring and retaining on its medi-

cal staff qualified doctors, and to hinder and obstruct the doctors serving on that staff from obtaining consultations with other doctors and specialists practicing in the District of Columbia. Pursuant to this plan and purpose the defendants have performed, among others, the following acts: Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society) circulated a "white list" of organizations, groups and individuals approved by the defendant The Medical Society of the District of Columbia, omitting from said "white list" the name of Group Health Association, Inc. with the intent and purpose of threatening with disciplinary action any doctors, members of defendant The Medical Society of the

District of Columbia, who should become members  
21 of the medical staff of Group Health Association, Inc.

or who should consult with members of the medical staff of Group Health Association, Inc." Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society) instituted disciplinary proceedings against two doctors, who were the only doctors on the medical staff of Group Health Association, Inc. who were members of defendant The Medical Society of the District of Columbia. Principally by means of such disciplinary proceedings, the said defendants induced and coerced one of the said doctors to resign from the staff of Group Health Association, Inc., and brought about the expulsion of the other doctor from membership in defendant The Medical Society of the District of Columbia. Defendant Harris County Medical Society at the request of defendant The Medical Society of the District of Columbia and of the other defendants (except defendant Washington Academy of Surgery), instituted disciplinary proceedings against a doctor on the medical staff of Group Health Association, Inc. who was a member in good standing of said defendant Harris County Medical Society and the only other doctor on the medical staff of Group Health Association, Inc. who was a member of defendant American Medical Association. The doctors against whom the above described disciplinary proceedings were instituted were and are qualified, ethical doctors in good standing; the disciplinary proceedings above described were instituted against these doctors because of their association with Group Health Association, Inc., and for the purpose.



22 of depriving the said Group Health Association, Inc. doctors of the privileges of consulting with other doctors and of using the facilities of the Washington hospitals. The said defendants also instituted similar disciplinary proceedings against a specialist practicing medicine in the District of Columbia, on the alleged ground that he had consulted with a doctor on the staff of Group Health Association, Inc., intending thereby to penalize the said specialist for failing to boycott Group Health Association, Inc. doctors and thereby to induce other specialists to boycott Group Health Association, Inc. doctors. Principally, by the means hereinabove described, defendants have coerced doctors to boycott Group Health Association, Inc. by refraining from becoming members of or by resigning from, the medical staff of Group Health Association, Inc., and to boycott doctors on the medical staff of Group Health Association, Inc. by refusing to consult with them about their patients. By thus coercing doctors, defendants hindered and obstructed Group Health Association, Inc. in procuring and retaining on its medical staff qualified doctors, and hindered and obstructed doctors on the medical staff of Group Health Association, Inc. in obtaining consultations with doctors not on that staff.

(b) Defendants have combined and conspired with the plan and purpose to hinder and obstruct Group Health Association, Inc. in obtaining access to hospital facilities for its members, and to hinder and obstruct the doctors on the medical staff of Group Health Association, Inc. from treating and operating upon their patients in Washington hospitals. Pursuant to this plan and purpose, defendants have performed, among others, the following acts: Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society) circulated among the Washington hospitals a "white list" of organizations, groups and individuals approved by the defendant The Medical Society of the District of Columbia, omitting from said "white list" the name of Group Health Association, Inc. with the intent and purpose of threatening with punitive action any such hospital which should admit to its courtesy staff a doctor on the medical staff of Group Health Association, Inc., however qualified or however great his professional skill. Defendants (other than defendants Washington Academy

of Surgery and Harris County Medical Society) urged and demanded that the Washington hospitals admit to their staffs only those doctors who were members of defendant The Medical Society of the District of Columbia or of neighboring medical societies affiliated with defendant American Medical Association, and, hence, of defendant American Medical Association, well knowing that doctors on the medical staff of Group Health Association, Inc., were not permitted, and intending that they be not permitted, to become or remain members of such societies. Defendant Washington Academy of Surgery recommended to those

24 Washington hospitals which made inquiry of it that said hospitals exclude from their courtesy staffs the surgeon on the medical staff of Group Health Association, Inc.; in so doing, said defendant Washington Academy of Surgery based its action principally upon the membership of said surgeon on the medical staff of Group Health Association, Inc. The Washington hospitals have failed and refused to appoint the surgeon on the medical staff of Group Health Association, Inc. to their courtesy staffs notwithstanding the fact that said surgeon is qualified and competent in the practice of surgery; in so doing, the said hospitals based their actions principally upon the membership of said surgeon on the medical staff of Group Health Association, Inc. Defendants (other than defendants Washington Academy of Surgery and Harris County Medical Society), by threatening to deprive him of courtesy staff privileges at a Washington hospital, induced a physician on the medical staff of Group Health Association, Inc. to resign from the said Association's medical staff. Principally by the means hereinabove described, defendants have coerced the Washington hospitals to boycott Group Health Association, Inc. and the doctors on the said Association's staff. By thus coercing the Washington hospitals, defendants hindered and obstructed Group Health Association, Inc. in obtaining access to hospital facilities for its members, and hindered and obstructed the doctors on the medical staff of Group Health Association, Inc. from treating and operating upon their patients in the Washington hospitals.

25 37. Some defendants have performed certain of the acts herein set forth in the formation and in the furtherance of the combination and conspiracy, while other

defendants have performed other of the acts herein set forth in the formation and in the furtherance of the combination and conspiracy. Each defendant has, however, knowingly participated in the formation and furtherance of the combination and conspiracy, pursuant to the common purposes set forth in paragraph 34 of this indictment.

38. The combination and conspiracy hereinabove described, effectuated in part in the manner and by the means hereinabove alleged, has, as intended by defendants, prevented doctors from becoming or remaining members of the medical staff of Group Health Association, Inc., and has prevented other doctors from consulting with the doctors on the medical staff of Group Health Association, Inc., and has prevented doctors on the medical staff of Group Health Association, Inc. from treating and operating on their patients in any of the hospitals in or near the District of Columbia. Principally by these means, defendants, in thus combining and conspiring, have substantially accomplished all the illegal purposes set forth in paragraph 34 of this indictment, and have succeeded in imposing all said intended restraints of trade.

## 26 VII. Jurisdiction and Venue

39. The combination and conspiracy herein set forth has been formed to a large extent and, as intended by the defendants, has operated and been carried out to a large extent, within the District of Columbia. Most of the restraints of trade resulting from such combination and conspiracy have been imposed and effected in the District of Columbia. Among other acts done in the District of Columbia for the purpose of effectuating the combination and conspiracy alleged in this indictment was the adoption of the resolution set forth in paragraph 35 of this indictment, at a meeting of defendant The Medical Society of the District of Columbia.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that defendants, throughout the period aforesaid, at the places, and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of the aforesaid trade and commerce in and of the District of Columbia; contrary to the statute in such case made

and provided, and against the peace and dignity of the United States of America.

John Henry Lewin, Allan Hart, Douglas B. Maggs, Grant W. Kelleher, Special Assistants to the Attorney General. Thurman Arnold, Assistant Attorney General. David A. Pine, Attorney of the United States in and for the District of Columbia.

G. J. No. Orig. Criminal No. 63221. United States vs. American Medical Association et al. Indictment. Filed in Open Court Dec. 20, 1938. Charles E. Stewart, Clerk. A True Bill. William M. Beall, Foreman.

. . . . .

28 Filed Mar. 29, 1939. Charles E. Stewart, Clerk

### Demurrer to the Indictment

Come now the defendants, American Medical Association; The Medical Society of the District of Columbia; Harris County Medical Society; Washington Academy of Surgery; Arthur Carlisle Christie; Coursen Baxter Conklin; James Bayard Gregg Custis; William Dick Cutter; Morris Fishbein; Thomas Allen Groover; Robert Arthur Hooe; Rosco Genung Leland; Leon Alphonse Martel; Thomas Ernest Mattingly; Francis Xavier McGovern; Thomas Edwin Neill; Edward Hiram Reede; William Mercer Sprigg; William Joseph Stanton; John Ogle Warfield, Jr.; Olin West; William Creighton Woodward; Wallace Mason Yater and Joseph Rogers Young, by their attorneys, and say that the Indictment herein is bad in substance.

. . . . .

### Matters of Law Intended to be Argued in Support of the Foregoing Demurrer

Among the matters of law intended to be argued in support of the foregoing Demurrer are the following:

29 1. The indictment does not allege facts sufficient in law to constitute any offense within the provisions of Section 3 of the Sherman Act, in that:

(a) The indictment does not charge a contract, combination or conspiracy in restraint of trade or commerce in the District of Columbia.



(b) The indictment does not set forth that the restraint of trade therein alleged was either unreasonable, material or direct.

(c) The restraints of trade alleged in the indictment were indirect, immaterial and reasonable.

(d) The indictment is vague, indefinite and uncertain, and fails to advise the defendants of the identity, nature or character of the trade or commerce to which the alleged conspiracy relates, or how or in what manner any of the acts, plans or conduct of the defendants, or any of them, resulted or could result in a restraint of trade or commerce in the District of Columbia.

(e) The allegations of the indictment are stated as conclusions, statements of opinion, inferences from conclusions and opinions, without averments of supporting and ultimate facts, and the defendants cannot lawfully be charged with knowledge of such conclusions, opinions and inferences; and, further, none of the alleged facts predicated upon such conclusions, opinions and inferences relate to or concern trade or commerce in the District of Columbia.

(f) There are no facts or ultimate facts alleged in the indictment that constitute a contract, combination or conspiracy in restraint of trade or commerce in the District of Columbia.

(g) The practice of their profession by physicians and surgeons is not trade or commerce within the meaning of Section 3 of the Sherman Act.

(h) The alleged business of Group Health Association, Inc., is not trade or commerce under Section 3 of the Sherman Act.

(i) The alleged acts of the members of Group Health Association, Inc., in obtaining or seeking to obtain by cooperative methods medical care for themselves and their dependents, as alleged in the indictment, do not constitute trade or commerce under Section 3 of the Sherman Act, and a restraint of or a conspiracy formed for the purpose of restraining said acts, as alleged in the indictment, is not in violation of said Section 3 of said Act.

(j) Group Health Association, Inc. was and is an unlawful organization engaged in the unauthorized practice of medicine as a corporation in violation of the laws of the

District of Columbia governing and controlling the right to practice medicine within the District of Columbia and a restraint of or a conspiracy to restrain said corporation or its members is not in violation of Section 3 of the Sherman Act.

(k) Group Health Association, Inc. was and is an unlawful organization engaged in the unauthorized operation of an insurance company in violation of the laws of the District of Columbia governing the rights and liabilities of insurance companies operating in the District of Columbia, and a restraint of or a conspiracy to restrain said corporation or its members is not in violation of Section 3 of the Sherman Act.

(l) Group Health Association, Inc., if held to be engaged in trade or commerce in the District of Columbia under Section 3 of the Sherman Act, is operating illegally in that the business, acts, purposes and functions of said Association and its members constitute a direct, material and unreasonable restraint of trade or commerce in violation of Section 3 of the Sherman Act if the medical profession and the practice of said profession by physicians and surgeons are held to be trade or commerce in the District of Columbia.

(m) Acts of the doctors performed in pursuit of their calling, as alleged in the indictment, do not constitute trade or commerce under Section 3 of the Sherman Act, and a restraint of or a conspiracy for the alleged purpose of restraining such doctors in the pursuit of their calling is not in violation of said Section 3 of said Act.

(n) The alleged business of the Washington Hospitals insofar as it is described in and charged to be the subject of the conspiracy set out in the indictment, is not trade or commerce under Section 3 of the Sherman Act, and a restraint of or a conspiracy for the alleged purpose of restraining such business of the Washington Hospitals is not in violation of said Section 3 of said Act.

31 (o) All and several, the acts and purposes of said defendants, as alleged and set forth in said indictment, were within the lawful rights and purposes of the said defendants.

2. Each and all of the acts charged against the defendants, and each of them, are in law and in fact acts involved in and a part of the practice of the learned profession of



the defendants and as such are not trade or commerce under Section 3 of the Sherman Act.

3. The averments of said indictment are too general, vague, indefinite and uncertain to inform the defendants of the nature and cause of the accusation against them, or to apprise them with reasonable certainty of the offense with which they are charged, or what they may expect to meet on the trial, so as to enable them to make their defense and, therefore, said indictment deprives said defendants of liberty and property without due process of law, contrary to the Fifth Amendment of the Constitution of the United States; and fails to inform the defendants of the nature and cause of the accusation against them as required by the Sixth Amendment to the Constitution of the United States.

4. The criminal provisions of Section 3 of the Sherman Act are so broad, unlimited, vague, uncertain and indefinite as not to inform the accused of the nature and cause of the accusation against them in violation of the Sixth Amendment to the Constitution of the United States, and said criminal provisions deprive defendants of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, and said criminal provisions illegally delegate legislative power to the Executive and Judicial branches of the Government to determine what acts under said statute should be held criminal and punishable in violation of Art. I, Sec. I, of the Constitution of the United States.

32      5. The indictment is bad in substance for other reasons apparent upon the face thereof.

33      DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Wednesday, July 26", A. D., 1939.

The court resumes its session pursuant to adjournment.  
Mr. Justice Morris, presiding.

Come as well the Attorneys of the United States, as each defendant herein by their attorneys William E. Leahy,

Edward M. Burke, Charles S. Baker, Adrien F. Busick, Seth W. Richardson and John E. Laskey Esquires; whereupon the defendants' demurrer to the indictment, heretofore argued and submitted to the Court, is by the Court sustained and the indictment is dismissed; and thereupon it is considered by the Court that each said defendant go thereof without day; whereupon the Attorneys of the United States pray an exception which is noted.

34 [Stamp:] Filed Jul. 31, 1939. Charles E. Stewart,  
Clerk.

### Notice of Appeal

Name and address of Appellant: United States of America.

Names and addresses of appellant's attorneys: Thurman Arnold, Assistant Attorney General, Washington, D. C.; David A. Pine, United States Attorney, Washington, D. C.

Offense: Violation of Section 3 of the Act of Congress of July 2, 1890 known as the Sherman Antitrust Act.

Date of judgment: July 26, 1939.

Brief description of judgment or sentence: Demurrers to Indictment sustained and Indictment dismissed.

The above-named appellant hereby appeals to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

United States of America, Appellant. Thurman Arnold, Assistant Attorney General. David A. Pine, Attorney of the United States in and for the District of Columbia.

Date: July 31, 1939.

### Grounds of Appeal

(1) The court erred in sustaining the defendants' demurrers to the indictment.

(2) The court erred in entering judgment for defendants dismissing the indictment.

35 (3) The court erred in its construction and interpretation of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

(4) The court erred in construing Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Anti-trust Act, as not applying to or forbidding the acts of the defendants set forth and charged in the indictment.

(5) The court erred in construing the indictment as not properly setting forth facts constituting a violation by the defendants of the provisions of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

(6) The court erred in holding that certain allegations of the indictment, are vague, indefinite, and uncertain, and the indictment, in some instances, lacking material facts, and, in some instances, containing improper allegations.

(7) The court erred in other respects apparent of record.

. . . . .

36 [Stamp:] Filed Jun. 6, 1940. Charles E. Stewart,  
Clerk.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America

To the Honorable the Justices of the District Court of the United States for the District of Columbia, Greeting:

Whereas, lately in the District Court of the United States for the District of Columbia, before you, or some of you, in a cause between United States of America, Plaintiff, and American Medical Ass'n., a Corporation; The Medical Society of the District of Columbia, a Corporation; Harris County Medical Association, an Association; Washington Academy of Surgery, an Association; Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Thomas Allen Groover, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Leon Alphonso Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, Wallace Mason Yater, Joseph

Rogers Young, Defendants, Criminal No. 63,221, wherein the judgment of the said District Court entered in said cause on the 26th day of July, A. D. 1939, is in the following words, viz:

The Court resumes its session pursuant to adjournment: Mr. Justice Morris, presiding.

Indicted for Combination and Conspiracy in Violation of Section 3 of the Act of Congress of July 2, 1890, Known as the Sherman Anti-Trust Act.

Come as well the Attorneys of the United States, as each defendant herein by their attorneys William E. Leahy, Edward M. Burke, Charles S. Baker, Adrien F. Busick, Seth W. Richardson, and John E. Laskey, Esquires; whereupon the defendants' demurrer to the indictment, heretofore argued and submitted to the Court, is by the Court sustained and the indictment is dismissed; and thereupon it is considered by the Court that each said defendant go thereof without day; whereupon the attorneys of the United States pray an exception which is noted. (Memorandum opinion filed, Proctor, J.)

37 as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

38 And Whereas, in the term of January, in the year of our Lord one thousand nine hundred and forty, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

March 4, 1940.

39 You, Therefore, are Hereby Commanded that such execution and further proceedings be had in said



cause not inconsistent with the opinion and judgment of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, the 6th day of June in the year of our Lord one thousand nine hundred and forty.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia.

No. 7488. United States Court of Appeals for the District of Columbia, April Term, 1940. United States of America, Appellant, vs. American Medical Association, a Corporation, The Medical Society of the District of Columbia, a Corporation, Harris County Medical Society, an Association, et al. Mandate.

[Stamp:] Filed Jun. 6, 1940, Charles E. Stewart, Clerk.

40 DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLUMBIA

Friday, June 14<sup>th</sup>, A. D., 1940.

The court resumes its session pursuant to adjournment:  
Mr. Justice Proctor, presiding.

Come as well the Attorney of the United States, as the defendants in proper person, The American Medical Association by its attorneys, Messrs. Olin West, Seth W. Richardson, Edward M. Burke and Adrien Busick; The Medical Society of D. C., by its attorneys, Messrs. Charles A. Baker, William E. Leahy and Dr. John H. Lyon; The Harris County Medical Society, by its attorneys, Messrs. Hugh Welsh, Edward M. Burke, Seth Richardson and Adrien Busick; The Washington Academy of Surgery, by its attorneys, Messrs. John O. Warfield, Jr., Charles A. Baker and William E. Leahy; Arthur Carlisle Christie, by his attorneys, Messrs. Charles A. Baker and William E. Leahy; Courson Baxter Conklin, by his attorneys, Messrs. Charles A. Baker and William E. Leahy; James Bayard Gregg Custis, William Dick Cutter, Robert Arthur Hooe, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram

Reede, William Mercer Sprigg; William Joseph Stanton, John Ogle Warfield, Jr., Wallace Mason Yater and Joseph Rogers Young, each by his attorneys, Messrs. Charles A. Baker and William E. Leahy; Morris Fishbein, Roscoe Genung Leland, Olin West and William Creighton Woodward, each by his attorneys, Messrs. Edward M. Burke, Seth W. Richardson and Adrien Busick; Prentiss Willson, by his attorney, John E. Laskey, Esquire; whereupon the defendants being arraigned upon the indictment the reading whereof each specifically waives, each pleads not guilty thereto, and for trial they put themselves upon the country and the Attorney of the United States doth the like; and thereupon each defendant enters into a recognizance  
 41 in the sum of One Hundred Dollars to appear before this Court from day to day during the present and subsequent terms thereof, to answer the indictment herein pending against said defendant until finally disposed of, and not to depart the Court without leave; whereupon the Attorney of the United States suggests to the Court the death of the defendant, Thomas Allen Groover, and moves the Court that the suit in his case be abated by said death; which is ordered.

42 DISTRICT COURT OF THE UNITED STATES FOR THE  
 DISTRICT OF COLUMBIA

Wednesday, February 5<sup>th</sup>, A. D., 1941.

The court resumes its session pursuant to adjournment:  
 Mr. Justice Proctor, presiding.

• • • • •  
 Come as well the Attorney of the United States, as each defendant in proper person, the defendants American Medical Association, the Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hoee, Roscoe Genung Leland, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater and Joseph



Rogers Young, each by their attorneys, Messrs. Edward M. Burke, Seth W. Richardson, Charles S. Baker, and William E. Leahy and Warren E. Magee, and defendant Prentiss Willson by his attorney, John E. Laskey, Esquire; whereupon each defendant being called for trial, it is ordered that a jury to try the issue joined herein be empaneled; and thereupon the jurors of the regular petit jury panels serving in Criminal Divisions One, Two and Three being called, sworn upon their voir dire and examined as to their competency for trying the issue joined herein, the said jury is completed and is composed of good and lawful persons of the District of Columbia, to wit:

Reuben Acton, Jr., Joseph F. Taylor, Sr., Edwin H. Ayers, Washington W. Horad, Jesse Ellis Porter, Egbert H. Irwin, Mrs. Madelyn M. McDowell, Otho T. W. King, Mrs. Edna Hayes O'Neil, Eugene B. Magruder, Columbus Facchina, Charles A. Marggraf.

43 who are sworn to well and truly try the issue joined herein; whereupon it appearing to the Court that the trial is likely to be a protracted one, two additional jurors are called and Frank E. McCrink and Lloyd F. Hadaway are sworn as alternate jurors; and thereupon the said jury are respited until the meeting of the Court tomorrow.

#### 44 Memoranda of Minute Entries

February 5, 1941. Jury sworn; trial begun; jury respited from day to day, to and including March 4, 1941.

March 6, 1941. Trial resumed; jury respited from day to day, to and including March 31, 1941.

April 3, 1941. Trial resumed; jury respited from day to day, to and including April 4, 1941, on which day trial was concluded.

45 [Stamp:] Filed Feb. 5, 1941, Charles E. Stewart, Clerk.

#### Motion to Expunge Portions of the Indictment and to Exclude Certain Evidence

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia,

Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Joseph Rogers Young, by their attorneys and move the Court that the following portions of the indictment be expunged and stricken and be excluded from the jury, and to exclude evidence concerning said portions of the indictment:

1. Paragraph 11.  
All of paragraph 11.
2. Paragraph 12.  
All of paragraph 12.
3. Paragraph 13.  
All of paragraph 13.
4. Paragraph 14.  
All of paragraph 14.
5. Paragraph 15.  
All of paragraph 15.
6. Paragraph 17.  
All of the last sentence of paragraph 17.
- 46 7. Paragraph 18.  
All of the last sentence of paragraph 18.
8. Paragraph 19.  
All of paragraph 19.
9. Paragraph 20.  
All of the 7th, 8th, 9th, 10th, 11th and 12th sentences of paragraph 20 which commence with the words "The said journal" and conclude with the words "American Medical Association."
10. All of the 4th and 5th sentences of paragraph 21, which commence with the words "These so-called 'Principles of Medical Ethics'", and conclude with the words "component societies."
11. Paragraph 22.  
All of the last sentence of paragraph 22.
12. Paragraph 23.  
All of the last sentence of paragraph 23.

## 13. Paragraph 32.

All of paragraph 32.

And for cause therefor defendants state:

1. The aforesaid portions of the indictment are not part of the charging part of said indictment and constitute vague, indefinite and uncertain conjectural conclusions and inferences from conclusions and should be treated as surplusage and disregarded.

2. Said portions of said indictment are inferentially stated, with material facts omitted, smack of a highly colored argumentive discourse against defendants and should be stricken as redundant, impertinent or scandalous.

3. Said portions of said indictment are passionate appeals and not clear, concise statements of essential facts, and should be stricken as prejudicial to the rights of the defendants.

And for other grounds appearing on face of the record.

Evidence and offers of evidence concerning said parts of said indictment should be excluded as such evidence or offers of evidence will prejudice the rights of the defendants.

47

### Matters of Law Intended to Be Argued in Support of the Foregoing Motion

Among the matters of law intended to be argued in support of the foregoing motion, are:

1. The designated parts of the indictment are vague, indefinite, and uncertain. They are no part of the charging part of the indictment and should be treated as surplusage, disregarded and expunged from the record.

2. The designated parts of the indictment are stated as conclusions and inferences from conclusions. Material facts are altogether lacking and inference, opinion and conjecture are freely indulged.

3. Every indictment should be confined to a clear and dispassionate statement of essential facts. Immaterial, irrelevant and impertinent matter usually is disregarded as surplusage. In the instant case, as the indictment will be submitted to the jury at the conclusion of the case, such a treatment will not suffice and prejudice will result from the mere reading of the indictment.

4. Any attempt on the part of the plaintiff to offer proof in support of any of the designated parts of the indictment, and a fortiori the admission of evidence will prejudice the rights of the defendants.

48. DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLUMBIA

Wednesday, February 5<sup>th</sup>, A. D., 1941

The Court resumes its session pursuant to adjournment:  
Mr. Justice Proctor, presiding.

Now comes each defendant, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater and Joseph Rogers Young herein, each by their attorneys, Messrs. Edward M. Burke, Seth W. Richardson, Charles S. Baker, William F. Leahy and Warren E. Magee, and file a motion to expunge portions of the indictment and to exclude certain evidence, which motion is by the Court denied without prejudice, to which action of the Court the defendants by their attorneys pray an exception which is noted in this case.

49. [Stamp:] Filed Mar. 6, 1941, Charles E. Stewart,  
Clerk.

Motion of Defendants for a Directed Verdict

Come now the defendants American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of

Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

And for cause therefor defendants state that no sufficient case has been made out against them and each of them under the indictment herein returned, to warrant and support a verdict on all or any of the charges alleged in said indictment.

50 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart,  
Clerk.

#### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."



And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

51 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart,  
Clerk.

### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the members of Group Health Association, Inc. in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

52 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart,  
Clerk.

### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson; by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

53 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart,  
Clerk.

### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young

and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

54 [Stamp:] Filed Mar. 6, 1941. Charles E. Stewart,  
Clerk.

#### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Harris County Medical Society, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Leon Alphonse Martel, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, Joseph Rogers Young and Prentiss Willson, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

55. IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLUMBIA—Friday March 7, A. D. 1941

The Court resumes its session pursuant to adjournment:  
Mr. Justice Proctor presiding.

. . . . .

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon said jury, by direction of the Court and upon their oath, say that each of the defendants Harris County Medical Society, Washington Academy of Surgery, Leon Alphonse Martel, and Joseph Rogers Young is not guilty; whereupon it is considered by the Court that the said defendants go thereof without day; and thereupon said jury, after hearing further of the evidence, is respited until the meeting of the Court Monday, March 10, A. D., 1941

56. [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

. . . . .

#### Motion to Strike (Background)

Now come the above named defendants, jointly and severally, and move the Court to strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called background of the conspiracy and consisting of evidence with respect to acts and deeds of the defendant American Medical Association, its officers and agents, occurring and transpiring outside of the District of Columbia and prior to January 1, 1937, upon the ground that such evidence and the whole thereof is incompetent, irrelevant, and immaterial to any of the issues in the above-entitled action.

. . . . .

57. [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

. . . . .

### Motion to Strike (Hospitals)

Now come the above-named defendants, jointly and severally, and move the court to strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called Washington hospitals for the purpose of proving that said hospitals were co-conspirators with the defendants herein upon the ground and for the reason that said evidence and the whole thereof is insufficient, as a matter of law, to make or constitute the said hospitals or any of them co-conspirators as charged by the Government and alleged in the indictment.

58 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

### Motion to Direct Verdict

Now come the defendants, jointly and severally, and move the Court to direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding as to all defendants, upon the ground and for the reason that the facts, acts, and circumstances, as shown by the evidence, and the entire record herein submitted does not establish or tend to establish any violation of Section 3 of the Sherman Act relating to trade or commerce, as set forth or defined in said Act.

59 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

### Motion to Direct Verdict

Now come the above-named defendants, jointly and severally, and move the Court to direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding upon the ground and for the reason that the record in said case, and the whole thereof, shows as a matter of law that Group Health Association, its officers, members



and operations were, with reference to all matters shown in the record, unlawfully engaged in the practice of medicine in the District of Columbia in violation of the laws applicable thereto, and were not, and none of them, unlawfully subject to or affected by any alleged restraints as charged and identified in the indictment.

. . . . .

60 [Stamped:] Filed Mar. 31, 1941, Charles E. Stewart, Clerk.

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#### Motion of Defendants for a Directed Verdict

Come now the defendants American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis-Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

And for cause therefor defendants state that no sufficient case has been made out against them and each of them under the indictment herein returned, to warrant and support a verdict on all or any of the charges alleged in said indictment.

. . . . .

61 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

. . . . .

#### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard

Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

\* And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

62

[Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

#### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursern Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the mem-

bers of Group Health Association, Inc. in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

63 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

#### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association; The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Wilson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

64 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson; and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

65 [Stamp:] Filed Mar. 31, 1941. Charles E. Stewart, Clerk.

### Motion of Defendants for a Directed Verdict

Come now the defendants, American Medical Association, The Medical Society of the District of Columbia, Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, William Creighton Woodward, Wallace Mason Yater, and Prentiss Willson, and each of them, by their attorneys and move the Court to direct the jury in the above entitled cause

to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

And for cause therefor defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty insofar as the above charge is concerned.

66      DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLUMBIA

Friday, April 4, A. D., 1941.

The Court Resumes Its Session Pursuant to Adjournment: Mr. Justice Proctor, Presiding.

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon after hearing the charge of the Court, the alternate juror, Frank E. McCrink, is by the Court discharged upon the final submission of the case to the jury; and thereupon the said jury upon their oath say that the defendants, American Medical Association and The Medical Society of the District of Columbia are guilty in manner and form as charged in the indictment, and that the defendants Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, and Wallace Mason Yater are not guilty; whereupon it is considered by the Court that the defendants Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Roscoe Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill,



Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, and Wallace Mason Yater go thereof without day.

67 [Stamp:] Filed Apr. 7, 1941. Charles E. Stewart,  
Clerk.

. . . . .  
**Motion to Set Aside Verdict and for Judgment for  
Defendants**

Come now defendants, American Medical Association, incorporated, and The Medical Society of the District of Columbia, incorporated, by their attorneys, and severally and individually and without waiving any other Motion herein filed or to be filed, move the court to set aside the verdict herein as to each defendant, and to enter judgment of not guilty as to each defendant notwithstanding the verdict herein, on the following grounds:

(1) The law holds a corporation can only act through its officers, agents and employees. In the present case as a matter of fact the evidence shows that the two corporations could only have acted by their officers, agents and employees all of whom have been acquitted. As the theory upon which a corporation can be held criminally responsible is the theory that the illegal acts and criminal intentions of its employees can be imputed to the corporation, it follows that in the present case there is no factual foundation for inferring that the corporations are guilty.

68 (2) The indictment having charged that the acts were committed by the individual defendants, not as individuals but as agents of the two corporate defendants, and the individuals having been acquitted it follows that the corporations cannot be held.

(3) The indictment does not charge nor does the proof show that the activities of the defendants, or either of them, violated any law of the United States. There is nothing to show that they concern trade or commerce in the District of Columbia within the meaning of Section 3 of the Sherman Act.

(4) The indictment shows that the activities of Group Health Association, its doctors and members, constitute the

illegal practice of medicine by a corporation, and therefore such activities could not be the subject of a conspiracy in restraint of trade under Section 3 of the Anti-Trust Law.

(5) The activities alleged and proved against the defendants, or either of them, were within their lawful rights.

(6) The jury having held the individual defendants are not guilty, there is no evidence left in the case with which to hold the corporate defendants.

(7) And for such other grounds as are apparent on the face of the record and the evidence herein and as may be argued at the hearing hereof.

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69 [Stamp:] Filed Apr. 7, 1941. Charles E. Stewart,  
Clerk.

• • • • •

#### Motion In Arrest of Judgment

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion filed or to be filed, move the court to arrest the judgment herein and hold for nought the verdict of "guilty" rendered against these defendants, and for grounds therefor, state:

(1) The activities charged to the defendants or shown by the evidence do not violate any law of the United States.

(2) The activities charged to the defendants or shown by the evidence do not concern trade or commerce in and of the District of Columbia under Section 3 of the Sherman Act.

(3) The business, operations and activities of Group Health Association, Inc., its doctors and members, and others dealing with the corporation, are part and parcel of the illegal practice of medicine and the illegal operation of insurance business and could not be the subject of unlawful restraints under Section 3 of the Sherman Act.

(4) The activities charged to the defendants or shown by the evidence are all within the lawful rights of the defendants.

70 (5) Because of the nature of the offense charged and the acquittal of all individual defendants, particularly the officers and members of defendant corporations, being the only persons charged or claimed to have acted illegally for and on behalf of the defendant corporations, the verdict is a legal anomaly, and is unsupported by the evidence, and amounts, in law, to a verdict of "Not Guilty" against said defendant corporations.

(6) The verdict is contrary to law and the evidence.

(7) And for other grounds apparent on the face of the record or in the evidence.

71 [Stamp:] Filed Apr. 7, 1941. Charles E. Stewart, Clerk.

#### Motion for New Trial

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion filed or to be filed, move the court to set aside the verdict in the above-entitled cause and to grant these defendants a new trial and for the grounds therefor state:

(1) The evidence in the record was insufficient to find the individual defendants guilty, and it is, therefore, not sufficient to find these defendants, or either of them, guilty. There is no evidence in the record to support the verdict except the evidence applicable to the activities of the individual defendants, and the record discloses that whatever was done by these corporate defendants was done, if at all, solely through the individual defendants who have been found not guilty.

(2) The court erred in refusing to admit evidence and testimony offered by the defendants.

(3) The court erred in holding that evidence offered by the defendants relating to the so-called \$40,000 payment of Home Owners Loan Corporation to Group Health Association, Inc., was irrelevant and could not be discussed to the jury in argument despite similar testimony theretofore received in evidence which remained before the jury.

72 (4) The court erred in holding that testimony concerning and relating to Medical Dental Service Bureau, operated and carried on by the local defendants, was irrelevant.

(5) The court erred in refusing to admit evidence tendered by the defendants pertaining to the solicitation of members and patients by Group Health Association, Inc., Home Owners Loan Corporation, and other persons acting on behalf of Group Health Association, Inc.

(6) The court erred in rejecting evidence offered by the defendants tendered to show advertising on behalf of Group Health Association, Inc., pertaining to the medical services of members of Group Health Association, Inc.

(7) The court erred in refusing to admit testimony tendered by the defendants tending to show subsidies paid in money, services, or other things of value, to Group Health Association, Inc., by The Twentieth Century Fund, Inc., Good Will Fund, Inc., Health Economics Association, Inc., Home Owners Loan Corporation, credit unions, and others.

(8) The court erred in restricting the evidence offered by the defendants pertaining to the quality, nature and character of the medical services proposed and furnished by the Group Health Association, Inc.

(9) The court erred in refusing evidence tendered by the defendants of the contract and the amended contract between Home Owners Loan Corporation and Group Health Association, Inc., wherein Group Health Association, Inc., as a corporation, promised to render medical services to Home Owners Loan Corporation for a consideration.

73 (10) The court erred in refusing to receiving testimony and evidence under offers of proof by the defendants pertaining to the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(11) The court erred in refusing to receive testimony and evidence under offers of proof by the defendants pertaining to the belief of the defendants in the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.



(12) The court erred in refusing testimony offered by the defendants tending to prove that one of the reasons for the disapproval or non-approval of Group Health Association, Inc., under the constitution of the defendant Medical Society of the District of Columbia, was an understanding and belief on the part of the defendants that the said Group Health Association, Inc., was engaged in the illegal practice of medicine and the illegal operation of an insurance business in the District of Columbia and was the recipient of public moneys unlawfully paid to the said Group Health Association by the Home Owners Loan Corporation, together with the receipt by Group Health Association, Inc., of various subsidies from the various persons and agencies hereinbefore mentioned.

(13) The court erred in refusing to admit evidence tendered by the defendants showing their reasons for their argument and persuasion pertaining to Group Health Association, Inc.

(14) The court erred in refusing to admit evidence offered by the defendants pertaining to a justification on their part for any of the claimed restraints pertaining to the practice of medicine; the furnishing of medical services, the activities and operations of Group Health Association, Inc., its doctors and members, or other doctors, and the business of the Washington hospitals.

(15) The court erred in rejecting evidence contained in the offers of proof of the defendants.

(16) The court erred in admitting evidence offered by the United States.

(17) The court erred in admitting in evidence the statements, oral and written, the letters and the remarks of the individual defendants heretofore found not guilty under the verdict.

(18) The court erred in receiving evidence concerning the so-called "background" of the conspiracy charged in the indictment and in overruling the motion of the defendants to strike this evidence from the record.

(19) The court erred, because of the prejudicial statement contained therein, by permitting the jury to take the indictment with the said jury into the jury room for examination and consideration by the said jury.



(20) The court erred in admitting evidence of or pertaining to the Washington hospitals and the activities thereof in relation to Group Health Association, Inc., its doctors and members, and in overruling the motion of the defendants to strike such evidence from the record.

(21) The court erred in denying the motions of these defendants and each of them for a directed verdict at the close of the Government's case.

(22) The court erred in denying the motions of these defendants and each of them for a directed verdict at the close of all the evidence.

(23) The court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

(d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup; including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

76

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(24) The charge of the court was prejudicial, among others, in the following respects:

(a) It overemphasized to the prejudice of the defendants, the allegations of the indictment without proper protective instructions.

(b) It was highly misleading.

(c) It characterized the approved list of the defendant Medical Society of the District of Columbia as a "white list."

(24) The verdict is contrary to law.

(25) The verdict is contrary to the evidence.

(26) The verdict is contrary to the weight of the evidence.

77

(27) The verdict is a legal anomaly and is repugnant to the law and evidence.

(28) And for other reasons apparent on the face of the record or in the evidence.

78 [Stamp:] Filed Apr. 10, 1941. Charles E. Stewart,  
Clerk.

### Stipulation

Pursuant to Law Rule No. 32(5), made applicable to motions in criminal cases by Law Rule No. 70, it is hereby Agreed and Stipulated by counsel for the respective parties hereto that time within which the United States may file answers and/or statements of points and authorities relied upon, in reply to defendants' motion for new trial, motion in arrest of judgment, and motion to set aside the verdict and for judgment for defendants, be and it is hereby extended to, and including, April 21, 1941.

John Henry Cewin, Grant W. Kelleher, Counsel for the United States. Edward M. Burke, Wm. E. Leahy, Seth W. Richardson, Chas. S. Baker, Warren Magee, Counsel for Defendants.

Dated: April 9, 1941.

79 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Thursday, April 10<sup>th</sup> A. D. 1941.

The court resumes its session pursuant to adjournment:

Mr. Justice Goldsborough, presiding.

Come as well the Attorneys of the United States, as the defendants, American Medical Association and The Medical Society of the District of Columbia herein, by their attorneys, Edward M. Burke, Seth W. Richardson, William E. Leahy, Charles S. Baker and Warren E. Magee, Esquires; whereupon the defendants' Motion to Set Aside Verdict and for Judgment, Motion in Arrest of Judgment and Motion for New Trial heretofore duly filed in the above-entitled case were considered and it is this 10th day of April, 1941, by the Court,

Ordered, for cause shown, that said Motions, and each of them, be set for argument and submission on the 2nd day of May, 1941.

James M. Proctor, Justice.

Approve: John Henry Lewin, of Counsel for the United States. William E. Leahy, of Counsel for Defendants.

80 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Friday, May 2, A. D., 1941.

The court resumes its session pursuant to adjournment:  
Mr. Justice Proctor, presiding.

• • • • •  
Come as well the Attorney of the United States, as the defendants in proper person and by its attorneys, Messrs. Seth W. Richardson, Edward M. Burke, William E. Leahy, Charles S. Baker and Warren E. Magee; whereupon the defendants' Motion to Set Aside Verdict and for Judgment for Defendants, Motion in Arrest of Judgment and Motion for a New Trial coming on to be heard, after argument by the counsel is submitted to the Court.

81 [Stamp:] Filed May 29, 1941. Charles E. Stewart,  
Clerk.

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Memorandum

All pending motions in various forms looking to the granting of a new trial are severally denied. The clerk will enter the proper orders.

James M. Proctor, Justice.

Dated May 19, 1941.

Copies mailed to all attorneys.

Above includes: Motion in Arrest of Judgment. Motion Non Obstante Verdicto. Motion for New Final.

J. M. P.

82 DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Thursday, May 29, A. D., 1941.

The court resumes its session pursuant to adjournment:  
Mr. Justice Proctor, presiding.

• • • • •  
Now comes here each defendant by its attorneys, Messrs. William E. Leahy, Edward M. Burke, Seth W. Richardson, Charles S. Baker and Warren E. Magee; whereupon the

motions to set aside verdict and for judgment for defendants, the motions in arrest of judgment and the motions for a new trial, heretofore argued and submitted, are by the Court denied, to which action of the Court each defendant by its attorneys prays an exception which is noted; whereupon it is demanded of each defendant what further it has to say why the sentence of the law should not be pronounced against it and it says nothing except as it has already said; and thereupon it is considered by the Court that, for its said offense, the defendant, American Medical Association pay a fine of Two Thousand Five Hundred (\$2500.00) dollars, to which action of the Court the defendant by its attorneys prays an exception which is noted and the defendant, The Medical Society of the District of Columbia pay a fine of One Thousand Five Hundred (\$1500.00) dollars, to which action of the Court the defendant by its attorneys prays an exception which is noted.

85 Filed May 29, 1941. Charles E. Stewart, Clerk.  
No. 63221

Criminal Indictment in One Count for Combination and Conspiracy in Vio. of Sec. 3, of the Act of Congress of July 2, 1890, Known as the Sherman Anti-Trust Act

• • • • •  
Judgment

On this 29th day of May, A. D., 1941, came the United States Attorney, and the Defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Vio. of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court Ordered and Adjudged that the defendant, American Medical Association, a corporation, pay a fine of Twenty-five Hundred (\$2500.00) Dollars.

James M. Proctor, Justice. (Seal District Court of the United States for the District of Columbia.)



84. Filed May 29, 1941. Charles E. Stewart, Clerk  
No. 63221

Criminal Indictment in One Count for Combination and  
Conspiracy in Violation of Sec. 3, of the Act of Congress of  
July 2, 1890, Known as the Sherman Anti-Trust Act

Judgment.

On this 29th day of May, A. D., 1941, came the United States Attorney, and the Defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Violation of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and Adjudged that the defendant, The Medical Society of the District of Columbia, a corporation, pay a fine of Fifteen Hundred (\$1500.00) Dollars.

James M. Proctor, Justice (Seal District Court  
of the United States for the District of Columbia.)

85. DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF COLUMBIA

Thursday, May 29, A. D., 1941.

The Court resumes its session pursuant to adjournment:  
Mr. Justice Proctor, Presiding.

On motion of American Medical Association and The Medical Society of the District of Columbia, defendants, it is ordered:

That pending proceedings on appeal or any other form of review in the Court of Appeals of the District of Columbia by said defendants and pending proceedings on cer-

tiorari or any other form of review in the Supreme Court of the United States by the said defendants, execution on the judgment and the collection of the fines and costs herein are hereby stayed without bond and the notices of appeal of said defendants when filed herein shall respectively operate as a supersedeas without bond.

Enter:

James M. Proctor, Judge.

No objection by Government. J. M. P.

86 Filed Jun. 2, 1941. Charles E. Stewart, Clerk

Notice of Appeal of American Medical Association, a Corporation

Name and Address of Appellant: American Medical Association, 535 North Dearborn St., Chicago, Illinois.

Name and Address of Appellant's Attorneys: Edward M. Burke, 10 South LaSalle St., Chicago, Illinois. William E. Leahy, 821 15th Street, N. W., Washington, D. C. Seth W. Richardson, 815 15th Street, N. W., Washington, D. C. Charles S. Baker, Munsey Building, Washington, D. C. Warren E. Magee, Munsey Building, Washington, D. C.

Offense: Combination and Conspiracy in Violation of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

Date of Judgment: May 29, 1941.

Brief Description of Judgment and Sentence: Judgment against the American Medical Association, a Corporation, on Verdict of Guilty as charged in the Indictment, and fine of \$2,500.00 assessed against said corporation.

87 American Medical Association, a Corporation, the above-named appellant, hereby appeals to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

Dated, June 2, 1941.

88 Grounds of Appeal:

1. The Court erred in treating as overruled defendant's demurrer to the indictment.

2. The Court erred in denying defendant's motion to expunge certain prejudicial portions of the indictment, and to exclude evidence pertaining to said portions of the indictment.

3. The Court erred in holding throughout the trial that the individual defendants, the other corporate defendant, and this corporate defendant were co-conspirators.

4. The Court erred in admitting certain evidence offered on behalf of the United States.

5. The Court erred in refusing to admit certain evidence offered on behalf of the defendant, and in refusing and overruling written offers of proof submitted by defendant.

6. The Court erred in holding that the defendant would not be permitted to make certain defenses to the indictment.

7. The Court erred in receiving the so-called background evidence and in denying defendant's motion to strike that evidence.

8. The Court erred in holding throughout the trial that the Washington hospitals and this corporate defendant were co-conspirators.

9. The Court erred in receiving evidence pertaining to the connection of the Washington hospitals with the alleged conspiracy, and in denying defendant's motion to strike that evidence.

10. The Court erred in holding that Group Health Association, Inc., a corporation, was not engaged in the practice of medicine, contrary to law.

11. The Court erred in holding that a corporation, such as Group Health Association, Inc., could lawfully practice medicine.

12. The Court erred in holding that Group Health Association, Inc., was not illegally engaged in the insurance business in violation of law.

13. The Court erred in holding that even if Group Health Association, Inc., was illegally engaged in the practice of

medicine and insurance, defendant could not lawfully restrain it.

89 14. The Court erred in holding that, even though Group Health Association, Inc., violated the principles of medical ethics of the medical profession, nevertheless the defendant could not lawfully restrain it.

15. The Court erred in holding that, even though the acts of defendant were lawful, if done for a certain purpose, nevertheless, it was a question for the jury whether the said acts were for lawful or unlawful purposes.

16. The Court erred in failing to hold that the actions of the defendant were within its lawful rights.

17. The Court erred in failing to hold that acts of the defendant in so far as they pertained to restraints of trade were not unreasonable, direct and material.

18. The Court erred in denying the motions of defendant for a directed verdict at the close of the evidence for the United States.

19. The Court erred in denying the motions of defendant for a directed verdict at the close of all the evidence.

20. The Court erred in refusing to give to the jury as instructions certain prayers for instructions requested by defendant.

21. The Court erred in giving to the jury as instructions certain prayers for instructions requested by the United States.

22. The Court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

90 (d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidiaries, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(o) In overemphasizing, to the prejudice of the defendant, the allegations of the indictment without proper protective instructions.

91 (p) In giving conflicting and misleading instructions.



(q) In characterizing the approved list of the defendant Medical Society of the District of Columbia as a "white list."

23. The Court erred in holding that the profession of a physician and surgeon is "trade."

24. The Court erred in failing to hold that the evidence was insufficient to support the verdict and that the verdict was contrary to law.

25. The Court erred in failing to hold that the verdict was a legal anomaly, was impossible in law, and repugnant to the law and the evidence.

26. The Court erred in holding that each and every of the five acts of restraint charged in the indictment were restraints of trade or commerce.

27. The Court erred in holding that the charge in the indictment and the proof adduced at the trial was not a "labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within Sec. 3 of the Sherman Act.

28. The Court erred in overruling and denying defendant's motion to set aside the verdict, and to enter judgment for the defendant.

29. The Court erred in overruling and denying defendant's motion in arrest of judgment.

30. The Court erred in overruling and denying defendant's motion for a new trial.

31. The Court erred in entering judgment on the verdict and assessing a fine against the defendant.

32. The Court erred in other respects apparent of record.

92 - [Stamp:] Filed, Jun. 2, 1941. Charles E. Stewart, Clerk.

Notice of Appeal of Medical Society of the District of Columbia, a Corporation

Name and Address of Appellant: Medical Society of the District of Columbia, 1718 M Street, N. W., Washington, D. C.

**Name and Address of Appellant's Attorneys:** Edward M. Burke, 10 South LaSalle St., Chicago, Ill.; William E. Leahy, 821 15th Street, N. W., Washington, D. C.; Seth W. Richardson, 815 15th Street, N. W., Washington, D. C.; Charles S. Baker, Munsey Building, Washington, D. C. Warren E. Magee, Munsey Building, Washington, D. C.

**Offense:** Combination and Conspiracy in Violation of Sec. 3, of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

**Date of Judgment:** May 29, 1941.

**Brief Description of Judgment and Sentence:** Judgment against the Medical Society of the District of Columbia, a Corporation, on Verdict of Guilty as charged in the Indictment, and fine of \$1,500.00 assessed against said corporation.

93      **Medical Society of the District of Columbia, a Corporation, the above-named appellant, hereby appeals to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.**

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**Dated June 2, 1941.**

94      **Grounds of Appeal:**

1. The Court erred in treating as overruled defendant's demurrer to the indictment.

2. The Court erred in denying defendant's motion to expunge certain prejudicial portions of the indictment, and to exclude evidence pertaining to said portions of the indictment.

3. The Court erred in holding throughout the trial that the individual defendants, the other corporate defendant, and this corporate defendant were co-conspirators.

4. The Court erred in admitting certain evidence offered on behalf of the United States.

5. The Court erred in refusing to admit certain evidence offered on behalf of the defendant, and in refusing and overruling written offers of proof submitted by defendant.

6. The Court erred in holding that the defendant would not be permitted to make certain defenses to the indictment.

7. The Court erred in receiving the so-called background evidence and in denying defendant's motion to strike that evidence.

8. The Court erred in holding throughout the trial that the Washington hospitals and this corporate defendant were co-conspirators.

9. The Court erred in receiving evidence pertaining to the connection of the Washington hospitals with the alleged conspiracy, and in denying defendant's motion to strike that evidence.

10. The Court erred in holding that Group Health Association, Inc., a corporation, was not engaged in the practice of medicine, contrary to law.

11. The Court erred in holding that a corporation, such as Group Health Association, Inc., could lawfully practice medicine.

12. The Court erred in holding that Group Health Association, Inc., was not illegally engaged in the insurance business in violation of law.

13. The Court erred in holding that even if Group Health Association, Inc., was illegally engaged in the practice of medicine and insurance, defendant could not lawfully restrain it.

95      14. The Court erred in holding that, even though Group Health Association, Inc., violated the principles of medical ethics of the medical profession, nevertheless the defendant could not lawfully restrain it.

15. The Court erred in holding that, even though the acts of defendant were lawful, if done for a certain purpose, nevertheless it was a question for the jury whether the said acts were for lawful or unlawful purposes.

16. The Court erred in failing to hold that the actions of the defendant were within its lawful rights.

17. The Court erred in failing to hold that acts of the defendant in so far as they pertained to restraints of trade were not unreasonable, direct and material.

18. The Court erred in denying the motions of defendant for a directed verdict at the close of the evidence for the United States.

19. The Court erred in denying the motions of defendant for a directed verdict at the close of all the evidence.

20. The Court erred in refusing to give to the jury as instructions certain prayers for instructions requested by defendant.

21. The Court erred in giving to the jury as instructions certain prayers for instructions requested by the United States.

22. The Court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations, of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

96 (d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(o) In overemphasizing, to the prejudice of the defendant, the allegations of the indictment without proper protective instructions.

97 (p) In giving conflicting and misleading instructions.

(q) In characterizing the approved list of the defendant Medical Society of the District of Columbia as a "white list."

23. The Court erred in holding that the profession of a physician and surgeon is "trade."

24. The Court erred in failing to hold that the evidence was insufficient to support the verdict and that the verdict was contrary to law.

25. The Court erred in failing to hold that the verdict was a legal anomaly, was impossible in law, and repugnant to the law and the evidence.

26. The Court erred in holding that each and every of the five acts of restraint charged in the indictment were restraints of trade or commerce.

27. The Court erred in holding that the charge in the indictment and the proof adduced at the trial was not a



"labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within Sec. 3 of the Sherman Act.

28. The Court erred in overruling and denying defendant's motion to set aside the verdict, and to enter judgment for the defendant.

29. The Court erred in overruling and denying defendant's motion in arrest of judgment.

30. The Court erred in overruling and denying defendant's motion for a new trial.

31. The Court erred in entering judgment on the verdict and assessing a fine against the defendant.

32. The Court erred in other respects apparent of record.

98 [Stamp:] Filed Jun. 3, 1941, Charles E. Stewart,  
Clerk.

#### Order Extending Time Within Which to File Bill of Exceptions

On motion of defendants, American Medical Association and The Medical Society of the District of Columbia, it is ordered:

That American Medical Association, a corporation, and The Medical Society of the District of Columbia, a corporation, defendants, have until and including November 1, 1941 to settle and file herein a bill of exceptions.

Enter.

James M. Proctor, Judge.

99 [Stamp:] Filed Oct. 24, 1941, Charles E. Stewart,  
Clerk.

#### Assignment of Errors

Now comes the American Medical Association, a corporation, defendant, by its attorneys, and for an assignment of errors in the above-entitled cause, states that the Court erred as follows:

1. In overruling the demurrer to the indictment.

2. In denying defendants' written motion at the beginning of the trial to strike certain specific portions of the indictment pertaining to the so-called "background" and other specific portions of the indictment which are argumentative and prejudicial, and to exclude evidence pertaining thereto.

3. In holding throughout the trial that a prima facie conspiracy with means as charged in the indictment had been established against each and all of the defendants and the Washington hospitals, and against each and all of the defendants and persons not named in the indictment.

4. In admitting evidence offered on behalf of the United States as follows:

Evidence pertaining to the so-called "background" of the alleged conspiracy; evidence of correspondence, conversations, acts, matters and things that occurred before the date of the alleged conspiracy; evidence of correspondence and conversations between certain defendants and the Washington hospitals and their employees and persons not named in the indictment and not parties to the alleged conspiracy; evidence of correspondence and conversations between persons, none of whom were parties to the alleged conspiracy; evidence developed through questions improper in form, evidence that was incompetent, irrelevant and immaterial, and letters, records, minutes, and documentary evidence not properly, sufficiently and lawfully identified.

5. In denying defendants' written motions to strike certain evidence pertaining to "background" and "hospitals" and in refusing defendants' oral motions to strike certain evidence.

6. In denying and refusing defendants' written and oral offers of proof and in refusing to admit evidence on behalf of the defendants as follows:

Evidence tending to show that Group Health Associations, Inc., was an illegal corporation, illegally practicing medicine in the District of Columbia and illegally engaged in the operation of an insurance company, and that defendants had knowledge thereof; evidence of the belief of defendants that Group Health Association, Inc., was operat-

ing illegally as aforesaid; evidence that Group Health Association, Inc., as a corporation, contracted with its members to furnish them medical service and did furnish them such medical service, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, sold medical services to Home Owners Loan Corporation, as a corporation, and that defendants had knowledge thereof; evidence that Home Owners Loan Corporation paid money and things of value to Group Health Association, Inc., and delivered furniture, fixtures and personal property of the United States to Group Health Association, Inc., contrary to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, employed doctors to render medical services to its employees and said doctors did so render such medical service and that defendants had knowledge thereof; evidence tending to show that Group Health Association, Inc., was not a mere broker between its members and the doctors who treated them and that defendants had knowledge thereof; evidence that defendants had been advised by counsel and public law 101 officers of the District of Columbia, the General Accounting Office of the United States, the Acting Comptroller General of the United States, members of the House of Representatives, and members of the Senate, of the United States, that Group Health Association, Inc., was operating illegally as aforesaid; evidence that Group Health Association, Inc., and its officials and employees, and Home Owners Loan Corporation, and its officials and employees, were of the opinion that during a portion of the time covered by the indictment, Group Health Association, Inc., was operating illegally as aforesaid; evidence tending to show that Group Health Association, Inc., was subsidized by the Twentieth Century Fund, Inc., a corporation, Health Economics Association, a corporation, Good Will Fund, Inc., a corporation, and the joint committee of Good Will Fund, Inc., and the Twentieth Century Fund, Inc., by Home Owners Loan Corporation and other sources, and that defendants had knowledge thereof; evidence that Home Owners Loan Corporation and other departments of the Federal Government coerced their employees to join Group Health Association, Inc., and that defendants had knowledge thereof; evidence that Group Health Association, Inc., and others on its behalf solicited persons to join

Group Health Association, Inc., to whom medical services were to be rendered; and that defendants had knowledge thereof; evidence that Group Health Association, Inc., advertised for its members to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that members of Group Health Association, Inc., assigned to Group Health Association, Inc., portions of their salaries or wages due or to become due from Home Owners Loan Corporation, contrary to the Federal Statute and to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., could not deliver a good quality of medical service at the price charged, and as constituted, could not and did not deliver a good quality of medical service, irrespective of the price charged and that the defendants had knowledge thereof; evidence that defendants, upon a full and true disclosure of facts, had been advised by counsel that all their  
 102 acts and doings as charged in the indictment and disclosed by the evidence were lawful; evidence that the delivery of medical services by Group Health Association, Inc., employee doctors was controlled by laymen and the defendants had knowledge thereof; evidence tending to show that the purpose and intent of the defendants in whatever they did was to advance their own interests and protect their medical society or association and the rules of ethics of the medical profession, and to repel an assault on the same by Group Health Association, Inc., and not to conspire with means to illegally restrain trade, as alleged, and all other evidence tendered by the defendants and refused by the Court.

7. In overruling the motions of the defendants for directed verdicts at the close of the evidence for the United States.

8. In overruling the motions of the defendants for directed verdicts at the conclusion of all the evidence.

9. In giving to the jury as instructions certain prayers for instructions requested by the United States, as follows: Government's requested instructions numbered 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 22, and 23.

10. In refusing to give to the jury as instructions certain prayers for instructions requested by the defendants as follows:

Defendants' requested instructions numbered 1, 2, 3, 5,



6, 8, 9, 10, 14, 15, 16, 17, 18, 23, 31, 32, 33, 36, 38, 40, 41, 42, 43, 45, 46, 49, 50, 51, 54, 55, 56, 57, 60, 61, 63, 64, 65, and 66.

11. In charging the jury, among others in the following respects:

(A) In charging that the practice of medicine, the furnishing of medical services, the activities of Group Health Association, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., and the Washington hospitals, were "trade" within the meaning of that word in Section 3 of the Sherman Act.

103 (B) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(C) In charging that if a person knows of a conspiracy to restrain trade and then acts in furtherance thereof he thereby becomes a party to such conspiracy.

(D) In charging that the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth in said indictment as a part of the general conspiracy there alleged, and particularly in charging that intended restraint of members of Group Health Association, Inc., was a sufficient basis for a conviction.

(E) In charging in substance and effect that the practices of Group Health Association, Inc., in the following respects were immaterial and irrelevant and not to be considered by the jury: the practice of medicine as a corporation; operation of an insurance company contrary to law; receipt of money and personal property from Home Owners Loan Corporation; sale of medical services from Group Health Association, Inc., to Home Owners Loan Corporation; receipt of subsidies from public and private funds; employment of doctors by a corporation; illegal assignment of Government salaries to Group Health Association, Inc.; coercion by Government departments on their employees to join Group Health Association, Inc.; solicitation of members by Group Health Association, Inc.; advertising for members by Group Health Association, Inc.; inability of Group Health Association, Inc., to render good quality of medical service at the price charged or as constituted at any price and that Group Health Association, Inc., did not render a good quality of medical care, and that rendering of medical serv-



ices by Group Health Association, Inc., was controlled by laymen.

(F) In defining "reasonable doubt."

(G) In defining a conspiracy to restrain trade under the Sherman Act.

(H) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(I) In charging that the operations of Group 104 Health Association, Inc., were legal and that the question of the legality of the operations and activities of Group Health Association, Inc., was irrelevant and not to be considered by the jury.

(J) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(K) In charging that aiding and abetting made a defendant a conspirator.

(L) In charging that defendants could be found guilty under the indictment if the jury believed that they conspired to restrain in any one of the particulars charged in the indictment, whereas the law requires that they be found guilty of conspiracy to restrain in all five of the respects alleged in the indictment before they can be found guilty under the indictment herein. The conspiracy charged is one conspiracy, not five conspiracies.

(M) In charging that if the jury believed that the defendants were guilty of conspiracy to restrain members of Group Health Association, Inc., as alleged, they could be found guilty of the conspiracy charged in the indictment. The same with reference to each of the other four restraints charged in the indictment.

(N) In failing to include in the instructions the important element that the alleged conspiracy must have included the means alleged in the indictment.

(O) In failing to charge that before a party can be guilty of a conspiracy to violate the Sherman Act the alleged con-

spirator must have agreed as a part of the conspiracy on the means or plan to be used to carry out conspiracy. In the absence of means or plan there is no conspiracy under the Sherman Act.

(P) In failing to properly charge that a conspiracy to restrain, to be illegal under the Sherman Act, must be direct, material and unreasonable.

(Q) In over-emphasizing, to the prejudice of the defendants, the allegations of the indictment without giving proper protective instructions.

(R) In giving conflicting and misleading instructions.

105 (S) In giving instructions that applied to a substantive violation of the Sherman Act and not to a conspiracy to violate the Sherman Act as charged in the indictment.

(T) In characterizing in the instructions the approved list of the defendant Medical Society of the District of Columbia as a "white list."

12. In overruling defendants' motion to set aside the verdict and to enter judgment for the defendants.

13. In overruling defendants' motion in arrest of judgment.

14. In overruling defendants' motion for a new trial. The evidence of, pertaining to and adduced through the individual defendants, who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants. The mass of such evidence was tremendous and highly prejudicial and was before the jury when they were considering and arriving at their verdict on the guilt or innocence of the corporate defendants, and, therefore, the corporate defendants did not receive an adequate separate consideration of their defenses.

15. In holding that even though acts of the defendants were lawful if done for certain purposes, and even though defendants testified that their acts were done for lawful purposes and there was no evidence to the contrary, nevertheless, it was a question for the jury to determine whether

the acts of the defendants constituted a conspiracy with means to restrain trade as alleged in the indictment.

16. In holding that the activities of Group Health Association, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., including the individual defendants, and that part of the operation of hospitals pertaining to the activities of Group Health Association, Inc., were "trade" within the meaning of Section 3 of the Sherman Act.

106 17. In holding that the charge in the indictment and the proof adduced at the trial was not a "labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within the purview of Section 3 of the Sherman Act.

18. In failing to hold that the acts and doings of the defendants, did not pertain to or refer to unreasonable restraints, nor did they pertain to or refer to direct or material restraints.

19. In failing to hold the evidence was insufficient to support the verdict and that the verdict was contrary to law. The evidence, of, pertaining to and adduced through the individual defendants who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants, and, therefore, the Court should have granted the motions of the corporate defendants after verdict, to set aside the verdict against them and enter judgment of "not guilty" in their behalf, or should have granted the motion of the corporate defendants after verdict for a new trial.

20. In failing to apply the law of principal and agent, master and servant, and the doctrine of imputation to this case, particularly with reference to the situation created by the verdict finding not guilty all agents and servants and finding guilty the principal or master (each corporate defendant).

21. In failing to hold the verdict a legal anomaly, impossible in law and repugnant to the law and the evidence, because the defendants are corporations and all the individuals through whom defendants are charged with participation in the misdemeanor alleged in the indictment were found "not guilty".

22. In failing to hold that defendants and each of them did not become a party to a conspiracy with means or a plan to unreasonably, directly and materially restrain trade in the District of Columbia.

107 23. In construing the indictment and evidence as setting forth and establishing a violation by the defendants of a conspiracy to restrain trade under Section 3 of the Sherman Act.

24. In its construction and interpretation of the Sherman Act, the Clayton Act and the Norris-LaGuardia Act.

25. In its construction and interpretation of the Healing Arts Practice Act for the District of Columbia (D. C. Code 1929, Title 5, Section 179).

26. In its construction and interpretation of the Benevolent Corporations Act for the District of Columbia (D. C. Code 1929, Title 5, Chapter 5).

27. In entering judgment on the verdict and assessing fines against the defendants.

28. In other respects apparent of record.

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108 [Stamp:] Filed Oct. 24, 1941. Charles E. Stewart, Clerk.

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### Assignment of Errors

Now comes the Medical Society of the District of Columbia, a corporation, defendant, by its attorneys; and for an assignment of errors in the above-entitled cause, states that the Court erred as follows:

1. In overruling the demurrer to the indictment.

2. In denying defendants' written motion at the beginning of the trial to strike certain specific portions of the indictment pertaining to the so-called "background" and other specific portions of the indictment which are argumentative and prejudicial, and to exclude evidence pertaining thereto.

3. In holding throughout the trial that a prima facie conspiracy with means as charged in the indictment had been established against each and all of the defendants and the Washington hospitals, and against each and all of the defendants and persons not named in the indictment.

4. In admitting evidence offered on behalf of the United States as follows:

Evidence pertaining to the so-called "background" of the alleged conspiracy; evidence of correspondence, conversations, acts, matters and things that occurred before the date of the alleged conspiracy; evidence of correspondence and conversations between certain defendants and the Washington hospitals and their employees and persons not named in the indictment and not parties to the al-

109 leged conspiracy; evidence of correspondence and conversations between persons, none of whom were parties to the alleged conspiracy; evidence developed through questions improper in form, evidence that was incompetent, irrelevant and immaterial, and letters, records, minutes, and documentary evidence not properly, sufficiently and lawfully identified.

5. In denying defendants' written motions to strike certain evidence pertaining to "background" and "hospitals" and in refusing defendants' oral motions to strike certain evidence.

6. In denying and refusing defendants' written and oral offers of proof and in refusing to admit evidence on behalf of the defendants as follows:

Evidence tending to show that Group Health Association, Inc., was an illegal corporation, illegally practicing medicine in the District of Columbia and illegally engaged in the operation of an insurance company, and that defendants had knowledge thereof; evidence of the belief of defendants that Group Health Association, Inc., was operating illegally as aforesaid; evidence that Group Health Association, Inc., as a corporation, contracted with its members to furnish them medical service and did furnish them such medical service, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, sold medical services to Home Owners Loan Corporation, as a corporation, and that defendants had



knowledge thereof; evidence that Home Owners Loan Corporation paid money and things of value to Group Health Association, Inc., and delivered furniture, fixtures and personal property of the United States to Group Health Association, Inc., contrary to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., as a corporation, employed doctors to render medical services to its employees and said doctors did so render such medical service and that defendants had knowledge thereof; evidence tending to show that Group Health Association, Inc., was not a mere broker between its members and the doctors who treated them and that defendants had knowledge thereof; evidence that defendants had been advised by counsel and public law officers of the District of Columbia, the General Accounting Office of the United States, the Acting Comptroller General of the United States, members of the House of Representatives, and members of the Senate, of the United States, that Group Health Association, Inc., was operating illegally as aforesaid; evidence that Group Health Association, Inc., and its officials and employees, and Home Owners Loan Corporation, and its officials and employees, were of the opinion that during a portion of the time covered by the indictment, Group Health Association, Inc., was operating illegally as aforesaid; evidence tending to show that Group Health Association, Inc., was subsidized by the Twentieth Century Fund, Inc., a corporation, Health Economics Association, a corporation, Good Will Fund, Inc., a corporation, and the joint committee of Good Will Fund, Inc., and the Twentieth Century Fund, Inc., by Home Owners Loan Corporation and other sources, and that defendants had knowledge thereof; evidence that Home Owners Loan Corporation and other departments of the Federal Government coerced their employees to join Group Health Association, Inc., and that defendants had knowledge thereof; evidence that Group Health Association, Inc., and others on its behalf solicited persons to join Group Health Association, Inc., to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., advertised for its members to whom medical services were to be rendered, and that defendants had knowledge thereof; evidence that members of Group Health Association, Inc., assigned to Group Health Association, Inc., portions of their salaries or wages due or to become

due from Home Owners Loan Corporation, contrary to the Federal Statute and to law, and that defendants had knowledge thereof; evidence that Group Health Association, Inc., could not deliver a good quality of medical service at the price charged, and, as constituted, could not and did not deliver a good quality of medical service, irrespective of the price charged, and that the defendants had knowledge thereof; evidence that defendants, upon a full and true disclosure of facts, had been advised by counsel that all their acts and doings as charged in the indictment 111 and disclosed by the evidence were lawful; evidence that the delivery of medical services by Group Health Association, Inc., employee doctors was controlled by laymen and the defendants had knowledge thereof; evidence tending to show that the purpose and intent of the defendants in whatever they did was to advance their own interests and protect their medical society or association and the rules of ethics of the medical profession, and to repel an assault on the same by Group Health Association, Inc., and not to conspire with means to illegally restrain trade, as alleged, and all other evidence tendered by the defendants and refused by the Court.

7. In overruling the motions of the defendants for directed verdicts at the close of the evidence for the United States.

8. In overruling the motions of the defendants for directed verdicts at the conclusion of all the evidence.

9. In giving to the jury as instructions certain prayers for instructions requested by the United States, as follows:

Government's requested instructions numbered 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 22, and 23.

10. In refusing to give to the jury as instructions certain prayers for instructions requested by the defendants as follows:

Defendants' requested instructions numbered 1, 2, 3, 5, 6, 8, 9, 10, 14, 15, 16, 17, 19, 23, 31, 32, 33, 36, 38, 40, 41, 42, 43, 45, 46, 49, 50, 51, 54, 55, 56, 57, 60, 61, 63, 64, 65, and 66.

11. In charging the jury, among others, in the following respects:

(A) In charging that the practice of medicine, the furnishing of medical services, the activities of Group Health As-

sociation, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., and the Washington hospitals, were "trade" within the meaning of that word in Section 3 of the Sherman Act.

112 (B) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(C) In charging that if a person knows of a conspiracy to restrain trade and then acts in furtherance thereof he thereby becomes a party to such conspiracy.

(D) In charging that the defendants could be found guilty of the offense charged in the indictment by proof of any single purpose or intent as set forth in said indictment as a part of the general conspiracy there alleged, and particularly in charging that intended restraint of members of Group Health Association, Inc., was a sufficient basis for a conviction.

(E) In charging in substance and effect that the practices of Group Health Association, Inc., in the following respects were immaterial and irrelevant and not to be considered by the jury: the practice of medicine as a corporation; operation of an insurance company contrary to law; receipt of money and personal property from Home Owners Loan Corporation; sale of medical services from Group Health Association, Inc., to Home Owners Loan Corporation; receipt of subsidies from public and private funds; employment of doctors by a corporation; illegal assignment of Government salaries to Group Health Association, Inc.; coercion by Government departments on their employees to join Group Health Association, Inc.; solicitation of members by Group Health Association, Inc.; advertising for members by Group Health Association, Inc.; inability of Group Health Association, Inc., to render good quality of medical service at the price charged or as constituted at any price and that Group Health Association, Inc., did not render a good quality of medical care, and that rendering of medical services by Group Health Association, Inc., was controlled by laymen.

(F) In defining "reasonable doubt."

(G) In defining a conspiracy to restrain trade under the Sherman Act.

(H) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(I) In charging that the operations of Group  
113 Health Association, Inc., were legal and that the question of the legality of the operations and activities of Group Health Association, Inc., was irrelevant and not to be considered by the jury.

(J) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(K) In charging that aiding and abetting made a defendant a conspirator.

(L) In charging that defendants could be found guilty under the indictment if the jury believed that they conspired to restrain in any one of the particulars charged in the indictment, whereas the law requires that they be found guilty of conspiracy to restrain in all five of the respects alleged in the indictment before they can be found guilty under the indictment herein. The conspiracy charged is one conspiracy, not five conspiracies.

(M) In charging that if the jury believed that the defendants were guilty of conspiracy to restrain members of Group Health Association, Inc., as alleged, they could be found guilty of the conspiracy charged in the indictment. The same with reference to each of the other four restraints charged in the indictment.

(N) In failing to include in the instructions the important element that the alleged conspiracy must have included the means alleged in the indictment.

(O) In failing to charge that before a party can be guilty of a conspiracy to violate the Sherman Act the alleged conspirator must have agreed as a part of the conspiracy on the means or plan to be used to carry out conspiracy. In the absence of means or plan there is no conspiracy under the Sherman Act.

(P) In failing to properly charge that a conspiracy to restrain, to be illegal under the Sherman Act, must be direct, material and unreasonable.



(Q) In over-emphasizing, to the prejudice of the defendants, the allegations of the indictment without giving proper protective instructions.

(R) In giving conflicting and misleading instructions.

(S) In giving instructions that applied to a substantive violation of the Sherman Act and not to a conspiracy to violate the Sherman Act as charged in the indictment.

(T) In characterising in the instructions the approved list of the defendant Medical Society of the District of Columbia as a "white list."

12. In overruling defendants' motion to set aside the verdict and to enter judgment for the defendants.

13. In overruling defendants' motion in arrest of judgment.

14. In overruling defendants' motion for a new trial. The evidence of, pertaining to and adduced through the individual defendants who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants. The mass of such evidence was tremendous and highly prejudicial and was before the jury when they were considering and arriving at their verdict on the guilt or innocence of the corporate defendants, and, therefore, the corporate defendants did not receive an adequate separate consideration of their defenses.

15. In holding that even though acts of the defendants were lawful if done for certain purposes, and even though defendants testified that their acts were done for lawful purposes and there was no evidence to the contrary, nevertheless, it was a question for the jury to determine whether the acts of the defendants constituted a conspiracy with means to restrain trade as alleged in the indictment.

16. In holding that the activities of Group Health Association, Inc., its members, its doctor employees, doctors other than those employed by Group Health Association, Inc., including the individual defendants, and that part of the operation of hospitals pertaining to the activities of Group Health Association, Inc., were "trade" within the meaning of Section 3 of the Sherman Act.



17. In holding that the charge in the indictment and the proof adduced at the trial was not a "labor dispute" within the meaning of the Clayton Act and the Norris-LaGuardia Act, and hence not within the purview of Section 3 of the Sherman Act.

18. In failing to hold that the acts and doings of the defendants, did not pertain to or refer to unreasonable restraints, nor did they pertain to or refer to direct or material restraints.

19. In failing to hold the evidence was insufficient to support the verdict and that the verdict was contrary to law. The evidence, of, pertaining to and adduced through the individual defendants who were found "not guilty" was inadmissible and hearsay evidence as to the corporate defendants and cannot be relied upon to support the verdict of "guilty" against the corporate defendants, and, therefore, the Court should have granted the motions of the corporate defendants after verdict, to set aside the verdict against them and enter judgment of "not guilty" in their behalf, or should have granted the motion of the corporate defendants after verdict for a new trial.

20. In failing to apply the law of principal and agent, master and servant, and the doctrine of imputation to this case, particularly with reference to the situation created by the verdict finding not guilty all agents and servants and finding guilty the principal or master (each corporate defendant).

21. In failing to hold the verdict a legal anomaly, impossible in law and repugnant to the law and the evidence, because the defendants are corporations and all the individuals through whom defendants are charged with participation in the misdemeanor alleged in the indictment were found "not guilty".

22. In failing to hold that defendants and each of them did not become a party to a conspiracy with means or a plan to unreasonably, directly and materially restrain trade in the District of Columbia.

23. In construing the indictment and evidence as setting forth and establishing a violation by the defendants of a conspiracy to restrain trade under Section 3 of the Sherman Act.

24. In its construction and interpretation of the Sherman Act, the Clayton Act and the Norris-LaGuardia Act.

25. In its construction and interpretation of the Healing Arts Practice Act for the District of Columbia (D. C. Code 1929, Title 5, Section 179).

26. In its construction and interpretation of the Benevolent Corporations Act for the District of Columbia (D. C. Code 1929, Title 5, Chapter 5).

27. In entering judgment on the verdict and assessing fines against the defendants.

28. In other respects apparent of record.

117 [Stamp:] Filed Oct. 20, 1941. Charles E. Stewart,  
Clerk.

#### Designation of Record

Now comes the American Medical Association, a corporation, defendant (appellant) in the above entitled cause, by its attorneys and designates the parts of the record which it desires to have included in the transcript, said parts being considered sufficient for the questions raised on appeal, namely:

(1) The indictment filed December 20, 1938.

(2) Demurrer of defendants to the indictment, filed March 29, 1939.

(3) Minute entry of judgment entered July 26, 1939, sustaining the demurrer of the defendants and dismissing the indictment.

(4) Notice of appeal of United States of America filed July 31, 1939.

(5) Mandate from Court of Appeals of the District of Columbia filed June 6, 1940, reversing the judgment of the District Court and remanding this cause for further proceedings not inconsistent with the opinion of said Court of Appeals.

- (6) Arraignment of June 14, 1940.
- (7) Pleas of not guilty of all of the defendants of June 14, 1940.
- (8) Minute entries showing impaneling of jury of February 5, 1941.
- (9) Minute entries showing trial by jury beginning February 5, 1941 and concluding April 4, 1941.
- (10) Motion to expunge portions of the indictment and to exclude certain evidence, filed February 5, 1941. Minute entry on said motion.
- 118 (11) Motion of defendants for a directed verdict filed March 6, 1941. Minute entry on said motions.
- (12) Verdict of the jury by direction of the court entered March 10, 1941, finding certain defendants not guilty.
- (13) Motion to strike (background), and motion to strike (hospitals), filed March 31, 1941.
- (14) Motions of defendants for a directed verdict filed March 31, 1941. Minute entry on said motions.
- (15) Verdict of jury of April 4, 1941, finding American Medical Association and The Medical Society of the District of Columbia "guilty", and all other defendants "not guilty".
- (16) Motion of defendants to set aside verdict and for judgment, filed April 7, 1941.
- (17) Motion of defendants in arrest of judgment, filed April 7, 1941.
- (18) Motion of defendants for a new trial, filed April 7, 1941.
- (19) Stipulation of counsel filed April 10, 1941. Order of April 10, 1941, setting May 2, 1941, as the date for the argument and submission of defendants' motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for a new trial.
- (20) Minute entry of order of May 2, 1941, showing defendant's motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for new trial argued and submitted to the court on said date.

(21) Minute entry (and memorandum of court) denying motions of defendants to set aside verdict and for judgment, in arrest of judgment and for a new trial, entered May 29, 1941.

(22) Order, judgment, fine and minute entry of the final judgment on the verdict of May 29, 1941.

(23) Order staying execution and for a supersedeas, entered May 29, 1941.

(24) Order of June 3, 1941, extending the time of defendants to file a Bill of Exceptions until and including November 1, 1941.

119 (25) Notice of appeal of the defendant, American Medical Association filed June 2, 1941.

(26) Notice of appeal of the defendant, The Medical Society of the District of Columbia, filed June 2, 1941.

(27) Minute entries showing the filing of the notices of appeal on June 2, 1941.

(28) Bill of Exceptions of defendants:

(29) Assignment of Errors of defendants.

(30) This Designation of Record.

(31) Clerk's Certificate to the Transcript.

. . . . .

120 The foregoing Designation of Record is satisfactory to the United States and is hereby consented to.  
E. Compton Timberlake, Of Counsel for the United States.

The foregoing Designation of Record is approved and the Clerk is directed to proceed with its preparation.

James M. Proctor, Justice.

121 [Stamp:] Filed Oct. 20, 1941. Charles E. Stewart,  
Clerk.

#### Designation of Record

Now comes, The Medical Society of the District of Columbia, a corporation, defendant (appellant) in the above

entitled cause, by its attorneys and designates the parts of the record which it desires to have included in the transcript, said parts being considered sufficient for the questions raised on appeal, namely:

- (1) The indictment filed December 20, 1938.
- (2) Demurrer of defendants to the indictment, filed March 29, 1939.
- (3) Minute entry of judgment entered July 26, 1939, sustaining the demurrer of the defendants and dismissing the indictment.
- (4) Notice of appeal of United States of America filed July 31, 1939.
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- (6) Arraignment of June 14, 1940.
- (7) Pleas of not guilty of all of the defendants of June 14, 1940.
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- (9) Minute entries showing trial by jury beginning February 5, 1941 and concluding April 4, 1941.
- (10) Motion to expunge portions of the indictment and to exclude certain evidence, filed February 5, 1941. Minute entry on said motion.
- 122 (11) Motion of defendants for a directed verdict filed March 6, 1941. Minute entry on said motions.
- (12) Verdict of the jury by direction of the court entered March 10, 1941, finding certain defendants not guilty.
- (13) Motion to strike (background), and motion to strike (hospitals) filed March 31, 1941.
- (14) Motions of defendants for a directed verdict filed March 21, 1941. Minute entry on said motions.
- (15) Verdict of jury of April 4, 1941, finding American Medical Association and The Medical Society of the District



of Columbia "guilty", and all other defendants "not guilty".

(16) Motion of defendants to set aside verdict and for judgment, filed April 7, 1941.

(17) Motion of defendants in arrest of judgment, filed April 7, 1941.

(18) Motion of defendants for a new trial, filed April 7, 1941.

(19) Stipulation of counsel filed April 10, 1941. Order of April 10, 1941, setting May 2, 1941, as the date for the argument and submission of defendants' motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for a new trial.

(20) Minute entry of order of May 2, 1941, showing defendants' motion to set aside the verdict and for judgment, motion in arrest of judgment, and motion for new trial argued and submitted to the court on said date.

(21) Minute entry (and memorandum of court) denying motions of defendants to set aside verdict and for judgment, in arrest of judgment and for a new trial, entered May 29, 1941.

(22) Order, judgment, fine and minute entry of the final judgment on the verdict of May 29, 1941.

(23) Order staying execution and for a supersedeas, entered May 29, 1941.

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(26) Notice of appeal of the defendant, The Medical Society of the District of Columbia, filed June 2, 1941.

(27) Minute entries showing the filing of the notices of appeal on June 2, 1941.

(28) Bill of Exceptions of defendants.

(29) Assignment of Errors of defendants.

(30) This Designation of Record.

(31) Clerk's Certificate to the Transcript.

124 The foregoing Designation of Record is satisfactory to the United States and is hereby consented.

E. Compton Timberlake, Of Counsel for the United States.

The foregoing Designation of Record is approved and the Clerk is directed to proceed with its preparation.

James M. Proctor, Justice.

Bill of Exceptions of defendants filed October 31, 1941.

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLUMBIA**

**CRIMINAL NUMBER 63221**

**UNITED STATES OF AMERICA, Plaintiff,**

**VS.**

**AMERICAN MEDICAL ASSOCIATION, a corporation, and THE  
MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, a corpo-  
ration, et al., Defendants**

**Bill of Exceptions**

Be It Remembered, that at the trial of the above-entitled cause before Associate Justice James M. Proctor and a jury, duly impanelled and sworn to try the issues herein, which trial began in Criminal Division No. 2 on February 5, 1941, and thereafter was further proceeded with and the following proceedings occurred:

**Appearances:**

On behalf of the United States: John Henry Lewin, Special Assistant to the Attorney General, Grant W. Kelleher, Special Assistant to the Attorney General, George B. Had-dock, Special Attorney, Department of Justice, Edward J. Hickey, Jr., Special Attorney, Department of Justice, Wal-ton Allen, Special Attorney, Department of Justice, E. Compton Timberlake, Special Attorney, Department of Justice.

On behalf of all defendants, except Prentiss Willson: Edward M. Burke, William E. Leahy, Seth W. Richardson, Charles S. Baker, Warren E. Magee.

On behalf of defendant Prentiss Willson: John E. Laskey.

Thereupon the defendants filed and submitted a motion to expunge portions of the indictment and to exclude certain evidence and moved the Court that the following portions of the indictment be expunged and stricken and be excluded from the jury and to exclude evidence concerning said por-tions of the indictment:

1. Paragraph 11. All of paragraph 11.
2. Paragraph 12. All of paragraph 12.

3. Paragraph 13. All of paragraph 13.
4. Paragraph 14. All of paragraph 14.
5. Paragraph 15. All of paragraph 15.
6. Paragraph 17. All of the last sentence of paragraph 17.
7. Paragraph 18. All of the last sentence of paragraph 18.
8. Paragraph 19. All of paragraph 19.
9. Paragraph 20. All of the 7th, 8th, 9th, 10th, 11th and 12th sentences of paragraph 20 which commence with the words "The said journal" and conclude with the words "American Medical Association".
10. All of the 4th and 5th sentences of paragraph 21, which commence with the words "These so-called 'Principles of Medical Ethics'", and conclude with the words "component societies."
11. Paragraph 22. All of the last sentence of paragraph 22.
12. Paragraph 23. All of the last sentence of paragraph 23.
13. Paragraph 32. All of paragraph 32.

And for cause therefor defendants state:

1. The aforesaid parts of the indictment are not part of the charging part of said indictment and constitute vague, indefinite and uncertain conjectural conclusions and inferences from conclusions and should be treated as surplusage and disregarded.

2. Said parts of said indictment are inferentially stated, with material facts omitted, smack of a highly colored argumentative discourse against defendants and should be stricken as redundant, impertinent or scandalous.

3. Said parts of said indictment are passionate appeals and not clear, concise statements of essential facts, and should be stricken as prejudicial to the rights of the defendants.

And for other grounds appearing on the face of the record.

Evidence and offers of evidence concerning said parts of said indictment should be excluded as such evidence or offers of evidence will prejudice the rights of the defendants.

## Matters of Law Intended to be Argued in Support of the Foregoing Motion

Among the matters of law intended to be argued in support of the foregoing motion, are:

1. The designated parts of the indictment are vague, indefinite, and uncertain. They are no parts of the charging part of the indictment and should be treated as surplusage, disregarded and expunged from the record.
2. The designated parts of the indictment are stated as conclusions and inferences from conclusions. Material facts are altogether lacking and inference, opinion and conjecture are freely indulged.
3. Every indictment should be confined to a clear and dispassionate statement of essential facts. Immaterial, irrelevant and impertinent matter usually is disregarded as surplusage. In the instant case, as the indictment will be submitted to the jury, at the conclusion of the case, such a treatment will not suffice and prejudice will result from the mere reading of the indictment.
4. Any attempt on the part of the plaintiff to offer proof in support of any of the designated parts of the indictment and a fortiori the admission of evidence will prejudice the rights of the defendants.

The Court: For the present, at least, I will deny the motion without prejudice.

Exception noted.

## GOVERNMENT'S CASE IN CHIEF

Gov. Ex. 1, received in evidence and read to jury as follows:.

"1. The American Medical Association,<sup>1</sup> is, and has been since April 14, 1897, incorporated under the laws of Illinois as a corporation. The Act concerning corporations approved April 18, 1872, and all acts amendatory thereof, under which said corporation is incorporated are filed herewith. Filed herewith are true copies of the charter, constitution, by-laws and principles of medical ethics. As indicated in the copies thereof filed herewith, said charter,

<sup>1</sup> Hereinafter referred to as AMA.



constitution, by-laws and principles of medical ethics were in effect throughout the period from February 24, 1937, to December 20, 1938. The office of the AMA is located at Chicago, Illinois. On April 1, 1938, the AMA had 109,435 members out of a total of 169,628 doctors in the United States.

"2. The Medical Society of the District of Columbia,<sup>2</sup> is, as has been for many years last past, a corporation incorporated under one or more Acts of Congress. Filed herewith are true copies of the Acts of Congress relating to the incorporation of the Medical Society of the District of Columbia. Filed herewith are true copies of the constitution and by-laws of said Society in effect on December 20, 1938. Except for the changes made in said constitution and by-laws as indicated in the copies hereof filed herewith, said constitution and by-laws were in effect throughout the period from February 24, 1937, to December 20, 1938. Said Society has its office in the District of Columbia. On April 1, 1938, the District Medical Society had 825 members out of a total of 1,979 doctors in the District of Columbia.

"3. The Harris County Medical Society is, and has been for several years last past, an unincorporated association of physicians and surgeons and has its office in Houston, Harris County, Texas.

"4. The Washington Academy of Surgery is, and has been for several years last past, an unincorporated association of surgeons in the District of Columbia. The officers of the Washington Academy of Surgery during the period February 24, 1937, to April 23, 1937, were Dr. Charles S. White, President; Dr. J. P. Shearer, Vice President; and Dr. W. Warren Sager, Secretary and Treasurer. The Officers of the Washington Academy of Surgery during the period April 23, 1937, to April 8, 1938, were Dr. John A. Cahill, President; Dr. Daniel Borden, Vice President; and Dr. F. C. Fishback, Secretary and Treasurer. The officers of the Washington Academy of Surgery during the period April 8, 1938, to December 20, 1938, were Dr. Daniel L. Borden, President; Dr. Fred Sanderson, Vice President; and Dr. J. Ogle Warfield, Jr., Secretary and Treasurer. The members of the Advisory Committee on Hospital Privileges of the Washington Academy of Surgery during the period

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<sup>2</sup> Hereinafter referred to as District Medical Society.

April 23, 1937, to April 8, 1938; were Dr. John H. Lyons, Chairman; Dr. Daniel Borden; Dr. Fred Sanderson; and Dr. A. L. Riddick. It is the best recollection of Dr. Crenshaw D. Briggs, Secretary of the Washington Academy of Surgery, and said Dr. Crenshaw D. Briggs would so testify if called, that the members of the Advisory Committee on Hospital Privileges during the period April 8, 1938, to December 20, 1938, were Dr. Fred Sanderson, Chairman; Dr. Alec Horwitz; Dr. F. X. McGovern; Dr. Paul Putzski; Dr. A. L. Riddick; and Dr. J. P. Shearer. Proof of additional members on said committee may be offered by either party and received in evidence.

"5. Each of the following corporations and associations was engaged in operating a hospital throughout the period from February 24, 1937, to December 20, 1938: Central Dispensary and Emergency Hospital; Children's Hospital of the District of Columbia; Columbia Hospital for Women; Eastern Dispensary and Casualty Hospital; Episcopal Eye, Ear and Throat Hospital; Garfield Memorial Hospital; Georgetown-University Hospital; George Washington University Hospital; National Homeopathic Hospital of the District of Columbia; Providence Hospital; Sibley Memorial Hospital; and Washington Sanitarium and Hospital. These hospitals are located in Washington, D. C., except that the Washington Sanitarium and Hospital is located in Takoma Park, Maryland. All of said hospitals claim to be incorporated not for profit.

"6. Membership in the AMA is ordinarily obtainable only through affiliated state or territorial medical associations. State or territorial medical associations are known as 'Constituent' societies of the AMA. Membership in most constituent associations or societies is ordinarily obtainable only through membership in affiliated county or local medical societies, which are known as 'component' societies of those constituent associations and of the AMA. The District Medical Society has no component societies. The Harris County Medical Association is a component medical society of the AMA. Members of affiliated component or constituent medical societies are, ipso facto, members of the AMA.

"7. Membership in the AMA was held by all individual defendants throughout the period from February 24, 1937,

to December 20, 1938. Throughout said period Dr. Morris Fishbein was Editor of the Journal of the AMA; Dr. Olin West was Secretary and General Manager of the AMA; Dr. William Creighton Woodward was Director of the Bureau of Legal Medicine and Legislation of the AMA; Dr. William Dick Cutter was Secretary of the Council on Medical Education and Hospitals of the AMA; Dr. Roscoe Genung Leland was Director of the Bureau of Medical Economics of the AMA. Said individuals during said period were full-time employees of the AMA.

"8. Each of the individual defendants, except the defendants Dr. Morris Fishbein, Dr. Olin West, Dr. William Dick Cutter and Dr. Roscoe Genung Leland, was a member of the District Medical Society throughout the period from February 24, 1937, to December 20, 1938. Dr. William C. Woodward was an honorary member of The District Medical Society throughout said period.

"9. Between February 24, 1937, and July 1, 1937, the following named persons were all of the members of the Executive Committee of the District Medical Society: Dr. William Mercer Sprigg, Dr. Henry C. Macatee, Dr. J. Lawn Thompson, Dr. R. Arthur Hooe, Dr. C. N. Chipman, Dr. Daniel L. Borden, Dr. Earl R. Templeton, Dr. William P. Herbst, Jr., Dr. J. B. Connolly, Dr. David Davis, Dr. Herbert Schoenfeld, Dr. Charles B. Campbell, Dr. Wallace M. Yater, Dr. Coursen B. Conklin, Dr. Joseph L. Horgan, Dr. Oscar B. Hunter, Dr. Thomas E. Neill, Dr. A. B. Bennett, Dr. William T. Gill, Jr., Dr. Augustus C. Gray, Dr. Sterling Ruffin, Dr. Francis X. McGovern, and Dr. Raymond T. Holden, Jr.

"10. Between July 1, 1937, and July 1, 1938, the following named persons were all of the members of the Executive Committee of The Medical Society of the District of Columbia: Dr. A. B. Bennett, Dr. William T. Gill, Jr., Dr. Augustus C. Gray, Dr. Raymond T. Holden, Jr., Dr. Francis X. McGovern, Dr. Sterling C. Raffin, Dr. Daniel L. Borden, Dr. Henry R. Schreiber, Dr. William Mercer Sprigg, Dr. Thomas E. Neill, Dr. Henry C. Macatee, Dr. Edward Hiram Reede, Dr. R. Arthur Hooe, Dr. C. N. Chipman, Dr. John A. Reed, Dr. S. A. Alexander, Dr. John F. Preston, Dr. Harry A. Fowler, Dr. R. Lomax Wells, Dr. Earle G. Breeding, Dr. John P. H. Murphy, Dr. Harry Lee Claude, Dr. Wallace M. Yater, and Dr. Coursen B. Conklin.

"11. Between July 1, 1938, and December 20, 1938, the following named persons were all of the members of the Executive Committee of the District Medical Society: Dr. Francis X. McGovern, Dr. Thomas E. Neill, Dr. Don R. Johnson, Dr. Raymond T. Holden, Jr., Dr. William J. Mallory, Dr. John Hugh Lyons, Dr. Henry C. Macatee. Mr. Theodore Wiprud was secretary of said Executive Committee during said period. The by-laws and constitution of the District Medical Society define the duties of the Executive Committee.

"12. Between February 24, 1937, and July 1, 1937, the following named persons were all of the officers of the District Medical Society: Dr. William Mercer Sprigg, President; Dr. William P. Herbst, Jr., Vice-President; Dr. Morris I. Bierman, Second Vice President; Dr. Coursen B. Conklin, Secretary-Treasurer.

"13. Between July 1, 1937, and July 1, 1938, the following named persons were all of the officers of the District Medical Society: Dr. Thomas E. Neill, President; Dr. Daniel B. Moffett, First Vice President; Dr. Jacob Kotz, Second Vice President; Dr. Coursen B. Conklin, Secretary-Treasurer.

"14. Between July 1, 1938, and December 20, 1938, the following named persons were the officers of the District Medical Society: Dr. William J. Mallory, President; Dr. John Hugh Lyons, First Vice President; Dr. William T. Gill, Jr., First Vice President; Dr. David Davis, Second Vice President. Dr. Coursen B. Conklin was Secretary-Treasurer from July 1, 1938, to November 2, 1938. Mr. Theodore Wiprud was Secretary-Treasurer from November 2, 1938, to December 20, 1938.

"15. Between February 24, 1937, and July 1, 1938, the District Medical Society had a committee known as the 'Hospital Committee.'

"16. Between February 24, 1937, and July 1, 1937, the following named persons were all of the members of said Hospital Committee: Dr. E. W. Titus, Dr. Francis X. McGovern, Dr. Ralph LeComte, Dr. John A. Reed, Dr. George R. Huffman, Dr. Fred R. Sanderson, Dr. Paul S. Putzki, Dr. Gregg C. Birdsall, Dr. Frank Leach, Dr. William H. Jenkins and Dr. J. G. Lewis.



"17. Between July 1, 1937, and July 1, 1938, the following named persons were members of said Hospital Committee: Dr. J. Ogle Warfield, Jr., Chairman, Dr. Leon A. Martel, Dr. William H. Jenkins, Dr. Gregg Custis Birdsall, Dr. J. G. Lewis, Dr. William B. Marbury, Dr. Jerome F. Crowley, Dr. Edward P. McLarney, Dr. Joseph P. Shearer, Dr. Warren Sager and Dr. John H. Trinder. Proof of additional members on said committee during said period may be offered by either party and received in evidence.

"18. Between July 1, 1938, and December 20, 1938, there was no Hospital Committee.

"19. The following defendants were members of the regular and attending staffs of the Washington hospitals indicated after each name:

"Dr. Coursen Baxter Conklin, Children's Hospital of the District of Columbia; Eastern Dispensary and Casualty Hospital; George Washington University Hospital.

"Dr. James Bayard Gregg Custis, National Homeopathic Hospital of the District of Columbia.

"Dr. Robert Arthur Hooe, Central Dispensary and Emergency Hospital.

"Dr. Thomas Ernest Mattingly, Sibley Memorial Hospital.

"Dr. Leon Alphonse Martel, Georgetown University Hospital.

"Dr. Francis Xavier McGovern, Garfield Memorial Hospital.

"Dr. Thomas Edwin Neill, Episcopal Eye, Ear and Throat Hospital and Garfield Memorial Hospital.

"Dr. William Mercer Sprigg, Columbia Hospital for Women.

"Dr. William Joseph Stanton, Georgetown University Hospital.

"Dr. John Ogle Warfield, Jr., Children's Hospital of the District of Columbia and Garfield Memorial Hospital.

"Dr. Prentiss Willson, Columbia Hospital for Women.

"Dr. Wallace Mason Yater, Georgetown University Hospital.

"Dr. Joseph Rogers Young, Eastern Dispensary and Casualty Hospital.



"20. Group Health Association, Inc.,<sup>3</sup> is, and has been since February 24, 1937, a corporation incorporated under the laws of Congress for the District of Columbia. Filed herewith is a true copy of the original certificate of incorporation of said corporation and amendments thereto. Filed herewith is a true copy of the original by-laws of said corporation as adopted on March 22, 1937, and the amendments thereto during the period from March 22, 1937, to December 20, 1938.

"The foregoing contents of this stipulation and the stipulation itself are not to be considered as evidence offered on behalf of any of the parties hereto, unless and until the same, or any part thereof, is offered in evidence by any party hereto and then only as evidence on behalf of the party offering same. Upon the offer by any party of any part or all of this stipulation in evidence, said stipulation, or any part thereof, will be subject to the objection by any other party hereto that the facts hereby stipulated, or any of said facts, are incompetent, irrelevant, and immaterial on the issues formed in this case. No objection will be made that the stipulation is not competent evidence upon the facts stated in the stipulation, but objection may be made that the facts stated in the stipulation are not competent on the issues. By this stipulation the parties hereto do not intend to stipulate that they, or any of them, had knowledge of the facts herein stated at the time they occurred.

"It is further understood and agreed that the specifications of times herein do not preclude proof by any party of the facts covered by this stipulation at times other than those specified herein, nor preclude proof by any party that said facts were represented or believed to be otherwise."

The documents filed with this stipulation were not read at this time.

DR. HUGH CABOT, a witness for the United States.

Direct examination:

By Mr. Lewin:

I am a surgeon. I graduated from the Harvard Medical School in 1898 and served a year to fourteen months in the

<sup>3</sup> Hereinafter referred to as Group Health.

Massachusetts General Hospital as an intern and was licensed to practice in 1899. I have been a practicing surgeon for over forty years. I took my preliminary education at the Roxbury Medical School, Harvard University, as an undergraduate and then was four years in the Medical School, from which I received my doctor's degree. I received an honorary degree of LL.B. at Queens University, Belfast, Ireland, in 1925. After completing my internship at the Massachusetts General Hospital, which is a large hospital, I went immediately into practice as an assistant of my cousin, the late Arthur T. Cabot, and then was appointed an instructor in operative surgery at the Harvard Medical School. In 1904 I was appointed surgeon to out patients of the Massachusetts Hospital and subsequently became assistant surgeon and finally full surgeon. I left Boston in 1919. I was an instructor from 1902 until 1910 in the Harvard Medical School; in 1911 I was appointed as an assistant professor, and in 1918 as a clinical professor. While an instructor in Harvard I practiced privately, as my time in the hospital was only part time, generally in the morning; I was also surgeon to a small hospital, the Baptist Hospital, which grew to reasonable size while I was there from 1901 to 1919. I went overseas and joined the British Medical Service in 1916 and served with them throughout the war. I am listed in Who's Who in America. I was decorated with the Order of St. Michael and St. George. I returned to Boston for a few months in 1919, and in September went to the University of Michigan as Professor of Surgery, a full-time appointment. In 1921 I became Dean of the Medical School of the University of Michigan, one of the larger medical schools of the country. As Dean I was occupied not only with surgery but with school administration and students' educational requirements. The University in an average year enrolls between 500 and 600 students, although there have been as many as 700. I left the University of Michigan in 1930 and went to the Mayo Clinic in Minnesota, operated by the famous Mayo Brothers, as one of the consulting surgeons, which meant that I was called in consultation by the physicians in most of the general fields of surgery, though most of my operative work was in genito-urinary surgery, now called urology. In other words, I was a consultant in general surgery, but, when I operated, it was in the field of genito-urinary surgery.

The Mayo Clinic was the first private organization which brought together in a very small town, Rochester, a group of physicians, surgeons and specialists. The conception of a group, formal group, probably began about 1887. The clinic and its original conception brought together a group in its own quarters, consolidated to save wasted motion of one physician getting in contact with another, and it was built into a complete organization such as one often associates with a hospital organization. The group of physicians at the clinic, however, never did own or operate hospitals, as the Mayo Clinic never thought it was wise to involve itself in the operation, the business operation of a hospital, though the hospital and the clinic were very closely associated. As the organization became larger, physicians engaged in various fields were brought in from other parts of the country, and, to some extent, from other countries. An important development in the clinic was the establishment of a fellowship group under funds saved by the clinic under which an increasing number of young physicians in all fields, who must have had not only a medical education but some hospital experience before coming to the clinic, remaining for a period of three or more years on a meager salary to obtain advanced degrees, generally master's degrees in some of the fields of medicine or surgery or the specialties. Some of these young physicians remained there five, six or more years and from that group in later years many of the members of the staff were selected. This practice has the effect of bringing there a very able and carefully selected group of youngsters. The Mayo Clinic enjoys an international reputation and there is no medical institution better known in the world today. Physicians connected therewith enjoy good reputations. While at the clinic I was compensated on a salary and that was true of my colleagues, except the group of partners. I was compensated by a salary while Dean of the Michigan Medical School and while professor of medicine at the Harvard Medical School. In discussing the advantages of gathering together doctors on a salary basis, it is important to remember that the grouping together of physicians for the purpose of effective practice goes back a great many years, having its early beginnings in the great hospitals in Europe where the general men and the special men were gathered together in the hospital for the purpose of effective treatment. The Mayo Clinic was the first group which you might call a

"private practice group," as the physicians and surgeons in the hospitals were not in private practice, at least in the early days. The Mayo Clinic was the first eminently successful attempt to bring together in a private institution a group which would cover all of the fields of medicine, surgery, and the specialties, and have there incorporated the necessary laboratories which are essential to the conduct of the great hospital organizations. The advantage at the Mayo Clinic or any of the clinics is the same as at the great hospitals, that you have a very close relation with all your colleagues; in normal private practice, it may be quite difficult to get hold of your colleagues, but in the hospital, and more so in the clinic, the physicians, surgeons and specialists have easy access to each other under one roof, and access to men in the laboratory field, the bacteriologists, the chemists, with a very great saving in effort and with enormous educational value. In the hospitals and even more so in the clinic, by constant contact, all can keep more or less abreast of the times.

Q. Dr. Cabot, what have you to say about this, the statement that this expedient of practicing in a group was a new idea of social philosophy which sprang up in 1933?

A. Oh, that is the time—the interpretation. The grouping for the purpose of more effective practice goes back for a great many years in the hospitals, and the Mayo Clinic, then the developments which took place as a result of the successful operation of that organization. A grouping could not be said to have begun at all recently. It is more or less steady development tending to fit in with the development, economic, financial, and particularly the development of medicine in its increasing complications.

I have been interested in and studied group practice, having actually visited the various samples of group practice, studied their publications, organization, not only in this country but in other countries; though nothing precisely corresponding with group practice, I think we understand, is at all common in this country outside of the hospital. In the field of medical economics, I have written two books, "The Doctor's Bill" (1936) and "The Patient's Dilemma" (1940). I have written on scientific subjects in the field of surgery and genito-urinary surgery for many years; I edited a two-volume work on neurology, known as



"Modern Neurology" and contributed some 150 papers to medical journals. At the present time I am working with a group of surgeons arranging for the medical service of a corporation known as "Health Service, Incorporated," on a prepayment basis, the corporation arranged with a partnership of five physicians to plan for and arrange for medical care to their subscribers, and I am the Medical Director of that partnership. This group was started in Boston by a group of people, none of whom were physicians but who were impressed by the fact that there was a considerable number of people in the community who, if they could obtain their medical care on a fixed prepayment basis, should be able, if the plans were worked out satisfactorily, to obtain their care within their rather modest incomes. I formed a partnership with four physicians who represented medicine, obstetrics, surgery and diseases of children to furnish medical care to the subscribers. They undertook to arrange for a planned medical care and to associate with themselves other physicians. I think perhaps the most striking thing about that organization was that from the start we tried very hard to get this thing to work with the least possible disturbance of the normal arrangements of private practice; what I refer to is the associated physicians, of which there is a considerable group, to carry on their private practice and to see the subscribers of Health Service, Incorporated, as they see their other patients. It was our notion that if a sufficiently large group of physicians was included, in this way they would be able to do this work without disturbing their normal relations and thus fit into the present though probably changing pattern of medical practice. The professional group of partners received no compensation for administrative work but were compensated for consultant work just as other physicians. A contract exists between the medical group and the corporation. The group is limited by agreement, to subscribers whose family incomes do not exceed \$2,500. There is no other limitation. The great thing is complete medical care, including special care when that is necessary, but not including hospital care, which could be obtained in any other way. Physical examinations are required of individuals but not groups for the purpose of getting a reasonable cross-section of the community and to prevent an overloading of people already ill, or old.



I have been a member of the Massachusetts Medical Society since 1909; that gave me membership automatically in the AMA; a member of the Michigan State Society while in the State of Michigan (11 years); a member of the Minnesota State Medical Society while in Minnesota (9 years); I have had membership in the American Surgical Association, the American Association of Genito-Urinary Surgeons, the American Neurological Association, the American College of Surgeons, the International Association of Urologists in Great Britain and France, and the French, Spanish, Italian and Romanian Neurological Associations.

In the Nineties there was relatively little specialization in medical practice, most physicians were general practitioners, and even specialists such as surgeons still continued to do general practice, though specialization had been going on for a number of years, to some extent, of the nose, throat and ear. Specialization of diseases of the skin were beginning and specialization in the diseases of children began just before the Nineties, but, as a whole, most physicians in that period were general practitioners. Diagnosis was largely a matter of careful physical examination and use of the five senses as specialized instruments were very few. The use of laboratories in the fundamental sciences, chemistry, bacteriology and pathology was much less than it is today. In the late Nineties the use of bacteriology in diagnosis was much less and the character of the bacteria was unknown. The whole body of knowledge in medicine was very much less, and by devoting a reasonable time a physician could grasp the whole field of medical practice. Equipment was much simpler than it is today; the number of drugs was smaller, though the physician had his thermometer and his stethoscope, as well as obstetrical equipment and some surgical instruments; the X-ray was in the experimental stage; medical knowledge was very much less extensive than it is today. Accurate diagnosis, such as one expects today, was not possible at that time, as they depended upon the experience of the physician. Much less was known about the causes of diseases; operations were fewer and done only in the most serious cases, as the risks were higher, and this situation applied to operations of the brain, as well as the body. In the last few decades enormous advances have been made in the fundamental sciences applicable to medicine; electricity has made possible many advances; extensive advances in bacteriology have been made; vaccinations have

come from this development; various blood tests have been developed; pathology has been improved and extended; pharmacology has advanced; physiology has advanced and been revolutionized, and it is probably true that the advances in the last forty years have, in their net value, been almost equal to the bulk of previous knowledge. This mass of knowledge today is entirely beyond the grasp of any one person, while possibly within the grasp of the physician half a century ago. Increasingly it has become impossible for any one physician, particularly if he is engaged in reasonably active practice, to have even a bowing acquaintance with many of the special developments of real importance to the patient. Specialization is very great and is steadily increasing. Forty or fifty years ago the general consulting physician and the general consulting surgeon fairly well covered their fields, but now specialties have made that impossible, so that the general surgeon or general physician today requires constant advice from his more specialized brethren. Specialties began to develop about fifty years ago. Until about twenty years ago most specialists had been in general practice. It is very common practice today for a person to at once go into a specialty without going into general practice. The chief cause for the increase in specialization is the increase in essential knowledge.

Today medical educational requirements are much higher; not only have the medical schools increased their requirements, but also most states require one or two years' work in a hospital. During the first hospital year they are known as interns and in the second year as residents. The graduate doctor of today must have access to all methods of modern diagnosis which were not possible in the earlier days, thus necessitating a modern laboratory and a vast amount of equipment. The important points in the grouping together of doctors and physicians are that you can consolidate office space and save enormously on equipment; time and expense can be saved by the use of a common laboratory and common technicians; a well organized clinic can have their laboratory work done more promptly, more efficiently and more cheaply. A clinic, in order to render complete medical care if they did not use a hospital laboratory, would have to have laboratories of pathology, bacteriology and medical chemistry available.

The modern hospital is run by a Board of Trustees who are laymen. The Board may be elective or appointive. The

Governing Board as a rule is a lay board sometimes with one or two physicians to advise it on details. The hospital may have an administrator, known as a hospital superintendent to carry on the business side of the hospital. The appointments to the medical staff are ordinarily made by the Governing Board. The staff of doctors directs the purely medical affairs of a modern hospital. Usually the medical staff is divided into a medical staff and a surgical staff. In large organizations these staffs will be subdivided into specialties. This staff is known as the regular or attending staff. A relatively modern development in the hospital system is the courtesy staff, who have no duties in the care of hospital patients but who bring their own patients to the hospital for treatment. The courtesy staff is elected by the Board of Trustees. In practice the members of the courtesy staff are selected by the regular staff and recommended to the trustees, who would hardly concern themselves with matters with which they could have little knowledge. It is not a difficult thing for the ordinary graduate physician who has completed his internship to get courtesy staff privileges at hospitals, but yet the extraordinary situation prevails the country over by which a physician licensed to practice can still be excluded from hospitals. That is an unfortunate condition because it is impossible for a physician to give the best medical care if he cannot get his patients to a hospital. He can, of course, send them to a hospital with a break between him and the patient; the patient goes to the care of somebody else. It is a very anomalous situation by which many physicians licensed by the state, authorized by the law to practice medicine and surgery, can still be excluded from the use of a hospital without which their practice is not as good as it could be. It is very serious, I think. I see no avoiding the conclusion that every physician licensed by the state must be assumed to have the capacity requisite in a physician, and that he ought, therefore, to be potentially a proper person to have on the staff of any hospital. It must always be true that there are second rate and incompetent people in the medical profession, just as there are in any other field. But I think they should be selected by the hospital staff by a method of trial and not excluded for any reason whatever. To undertake to say that a given physician is not a competent person to be admitted to a hospital for the care of patients seems to me to run counter to the fact

that the state has given him a license to practice medicine. Then another organization, not a state organization, undertakes to say that he may not do so in the most efficient way. I think the selection, and the exclusion of the incompetents, should be made by admission to the hospital staff, then bringing them along, under the supervision and advice of their elders, and, with the possibility that they are incompetent or dishonest, of excluding them. I do not like the notion that there can be physicians licensed by the state who are forbidden to practice medicine in the proper way.

Q. Are there any other standards that ought to operate to exclude him?

A. Oh, I think so. I think that many physicians applying for a hospital will be people of limited ability; that they should be admitted to the staff only to do the more simple things. Take the surgical staff, for instance. They should at the beginning be allowed to do only the more simple and safe operations. As they go on demonstrating their capacity under the supervision of the senior staff they should be allowed to do more and more. For some of them there would obviously be a limit beyond which they ought not to be allowed to go; they are not of the caliber that can take on the difficulties and responsibilities and the tragedies of major operative specialties, for instance. They are not built that way. But they ought to be allowed in the hospital to do those things for which they have demonstrated a capacity.

Q. Those standards you have described go to the professional ability of the man?

A. Yes.

Q. What ethical requirements or standards should there be, in your opinion?

A. I suppose, the ethical requirements of the general population. You don't want a crook around the hospital any more than you would want him anywhere else. A person who cannot live up to the ethical standards of society is no person to have around a hospital.

Q. Are you defining ethics in answer to that question, doctor?

A. As rules for the conduct of life, sir.

Q. Does it have a moral significance?

A. Oh, very clearly.

Q. Does it embrace economic views or practices?



A. Oh, I don't see how it could. I may believe in free silver, but I don't think that that makes me necessarily a good surgeon.

Q. Or necessarily not a good surgeon?

A. No.

There has been a great increase in the use of hospitals in the last four decades. Formerly the patient's house was turned into a temporary hospital. Medical and surgical work is better done at a hospital and the necessary equipment is at hand. The cost of adequate medical care has thus increased enormously. The patient is getting enormously better medical care today but inevitably much more expensive, as the cost has risen with the improvement. Typical examples of increased costs are the higher hospital charges, special nursing, expensive medications, use of oxygen, use of the X-ray, increased overhead expenses of the physician which cause him to collect from his patients enough to pay him a reasonable income, and the increased number of consultations. Consultations today are and should be very much more numerous than they were. The consultant having special knowledge and seeing a great deal fewer patients must have more for the consultation than the physician who sees the patient in his office; and therefore, the charge for consultants, if they are used to the full extent that it is to the interest of the patient to use them, enters very largely in the bill.

I believe that these increased costs have made it very difficult for a family with an income of less than \$3,500 a year to obtain and pay for adequate medical care today on the fee-for-service basis, that is, a basis where each physician who gives advice charges his own fee. People with an income of \$3,500, in my judgment, have three choices in meeting the expenses of medical care which he cannot pay; he may do what a great many people certainly do, ask for and obtain less medical care than he feels would be desirable and is in fact desirable; or, he may more or less throw himself on the mercy of his community and accept charity; or, adequate medical care can be provided on a prepayment basis, whereby a considerable group of people band together, make a regular payment and then engage the services of a group of physicians for whom this group of consumers can supply a definite income. If the group is of sufficient size, the thing will provide entirely adequate and very good treatment, though that could not be delivered by



a smaller group. This practice has the outlines of an insurance feature, though it is not technically insurance as such.

I am familiar with various prepayment plans, such as the Ross-Loos Clinic, through observation and study. The Ross-Loos Clinic began in a small way; took only people who represented a percentage of an employed group. Dependents of subscribers may be brought in at reduced rates. The plan from the start included hospital care. Patients were sent to hospital and expenses defrayed by Clinic, but the hospital remained a local, private institution. Very early they built themselves a clinical building.

Prepayment feature has not sprung up as a development in social philosophy only since 1933. The theory of prepayment goes back into the days of the British Friendly Societies and has been going on for more than a century. It was evolved in cases of large practice, and the principle and theory is present in the various forms of contracts for medical care in this country and elsewhere, and, on the whole, which did a pretty poor job.

In my opinion the Ross-Loos Clinic has been successful. As to professional reputation, the physicians in the neighborhood are inclined to be critical, while those who came from a distance, stay and observe their work, are inclined to the view that it is very successful. I think that the care given is, on the whole, something better than good care. I think that you can rely upon the growth of the organization as evidence that they must have been providing a pretty satisfactory article or they would have failed to grow as they have. They are approaching a point now in their growth where they would be well advised to take no more patients, because there is a size to which any organization can grow where they might get themselves into administrative difficulty which would be very serious. In my opinion, there couldn't possibly be an ethical objection to a doctor who accepted a salary from such a group; 90% of the civilized world is on salary; I was on a salary for twenty years, ethics have nothing to do with the salary. I have had some experience with the Trinity Hospital group of Little Rock, Arkansas, and in my opinion that group is extending very good service to those it treats. For some time it has been rendering satisfactory service. It involves group practice and prepayment, with salaried doctors. I am acquainted with the Stanacola plan of the Standard Oil Company in Louisiana. I am not sure what part the Standard Oil Com-

pany played in organizing the group. The Standard Oil Company, and many other great corporations, have a medical organization for their whole organization. I am not sure that some of the officials of that company didn't suggest the plan; here was the solution of a problem which the companies did not want to undertake. The company, I think, assisted them more or less with the payment of rent and the furnishing of quarters and things like that. A good many companies believe that the really complete and satisfactory care of their employees is to their own interest. Some companies have provided that care without any charge to such employees. Preventative medicine undertakes to prevent the occurrence of diseases, and it is one of the features of the prepayment plan, which I think is of most importance and an asset. It is an asset because a worried employee is not an effective worker. A group has been going on for many years in the Endicott-Johnson Company in Binghamton, New York. The company pays for and offers to their employees complete medical service as a good piece of business. A producer group is an organization set up primarily by physicians, like the Ross-Loos group, in which physicians group themselves together and offer to the community medical care on the prepayment basis. The consumer group is one in which the initiative comes from the patient and is a quasi-cooperative arrangement in which a number of individuals form an organization and then proceed to enter into an agreement of some kind with a group of physicians to provide medical care. In the middle is the industrial establishment for the care of employees and sometimes their dependents.

There is no reason, in my opinion, for rejecting a doctor's application to a courtesy staff of a hospital because he is identified with a prepayment plan, such a rejection would be improper. It is essential that patients of these groups be admitted to hospitals, as no group can properly offer medical care which cannot assure hospital care. Group hospitalization plans are somewhat similar and somewhat different from medical groups; group hospitalization plans provide an insurance feature or feature like insurance for hospital care only, and has nothing to do with medical care, though it is possible for a medical group to include in its scheme a group hospitalization plan, as Ross-Loos has done it. I am somewhat familiar with the medical services rendered by the Southern Pacific Railroad, which is a group

practice set up by a large corporation for the benefit of its employees. These plans are common, more so in the West and Middle West than in the East. This type of practice is not "herd practice."

The advantages to the patient of prepayment group practice seem to be very clear and important; all with moderate incomes constantly dread severe accident or illness as likely to undermine our economic security; here is a method by which that can be determined, under which they can be sure of getting complete care, depending for success only on the individual's ability to select a proper group and in that connection the patient is confronted with the same problem in making his decision or choice of groups as he meets in the selection of a doctor. Among groups as well as private individual doctors there are those which are poorly conducted. Group practice brings within the patient's reach articles of medicine and medical care which a patient does not ordinarily get from a private practitioner, such as preventive medicine. Under group prepayment practice he gets preventive medicine as a certainty together with his care for diseases, accidents, etc., as they turn up. During childhood and after middle age competent medical supervision is very important, yet under a system of private practice we are inclined to neglect this care. From the point of view of the physician, the advantages are various; they have ready access to their colleagues; there is no loss of time; they are at liberty to ask for consultations which they might hesitate to ask under normal conditions because of the expense to the patient; they are at liberty to turn a patient over for particular treatment to one of their colleagues, all without loss of time, and the question of cost to the patient is eliminated. The physician has the opportunity to keep abreast of specialized fields by access to and discussion with colleagues. The physician will have a fixed income. Younger men may be employed just as in hospitals. They are able to exercise their energies and their talents, because of this fact, successfully in the group practice. They are supervised by more experienced physicians, just as in hospitals, and progress as they show ability. There are qualified doctors to man group practice.

Q. Would the quality of medical care given by these groups be inferior to the average care gotten on a fee-for-service basis?

A. I don't see how you can possibly generalize and say that every organized group would give care superior to the ordinary care, or that the reverse would be true. As I have said, some groups, like individual physicians, dispense an unsatisfactory article and that is no different from the situation which has always existed, in the case of physicians. On the whole, it would probably be easier to choose a capable group than it is to choose physicians and then pass on to a variety of specialists.

Q. So it depends on the individual physician and not on the type of practice in which he is engaged?

A. I think in a group you stand a better chance of getting a good article.

I have been able to give a better quality of medical care while on a salary than when in private practice, as I was better able to tell the patient the truth and had more access to consultants. From my own experience I am led inevitably to the conclusion that I can give better service in a group than I can as an individual practitioner, even with hospital privileges.

A doctor who engages in group practice is not thereby prevented from having that proper relationship with his patients that he should have. The relation between doctor and patient is between the doctor and the patient and doesn't depend on the type of organization. It depends on the wisdom and humanity of the physician and his proper relation to the patient. There is not necessarily any lay interference from the laymen who are handling the business side of the group. It may occur, of course, and I think that is one of the things with regard to which the medical profession ought to give its advice very freely, to be very sure that the lay management deals with the things with which it has capacity, and leaves to trained experts decisions on matters of medicine and things for which it has special knowledge and ability. The problem is the same as it is with the hospitals where you have a lay board of trustees and a medical staff. I think that it is possible that there is more reason for the lay board to interfere in this group practice than there is for it to interfere in the conduct of the affairs of the ordinary hospital. The relationship between a cooperative group and a group of physicians is a little different from the relationship of the hospital trustee who ordinarily isn't personally involved. I think there



is a little danger that the cooperative will think of medical care as it thinks of buying commodities and try to get the same article at a little lower price; there is nothing more worthless in the world, and the danger is that the layman may not recognize that point. That is a point upon which I think well advised bodies of physicians can produce a controlling influence and should do so. It would not be an example of improper interference in medical matters for the lay president of one of these groups, charged with its business affairs to write a letter to the hospitals telling the hospitals that the group would like access to these hospitals for its physicians. He is simply asking for his group the ordinary privileges which might ordinarily be obtained for them. A reasonably worded letter from the president along that line could be written in an arrogant way, but there certainly wouldn't be anything arrogant in the mere fact of writing the letter. There is nothing wrong with trying to make sound arrangements with a hospital. I am inclined to say that if hospitals could be offended by such a letter they had better get new management. Group practice on a prepayment basis would have absolutely no effect upon the confidential relationship that exists generally between patients and hospitals; as to the danger that the records in the clinic, concerning the patient, might get into unauthorized hands, it is practically the same situation that has occurred in the great hospitals for a great many years. Those records are confidential communications and cannot be at the disposal of anybody else without the permission of the patient. I am aware that some records have been improperly shown, but I am also aware that private physicians have also allowed access to those records. Group practice on a prepayment basis has no bearing on that problem; while in group practice occasionally I tried to get a record that they wouldn't give me because my name wasn't on the folder and I had to get another doctor to say I was a proper person to look at it.

The term "free choice of physicians" is ordinarily used to mean that the individual looking for medical care may take any physician whose services he thinks he desires and in regard to which capacity he has heard, on what he believes to be good evidence, that he is a good physician. It is the doctrine of reasonable choice. Group practice on a prepayment basis preserves all of the elements of freedom of choice of physicians that are worth preserving. I don't



myself believe that the average layman is well equipped to make the choice of physician where there are a considerable number of men available. A different condition may occur where there are not many physicians in the neighborhood, but it is very difficult in selecting a physician for the layman at times to make a good choice, because he has little or no knowledge of the article which he is trying to buy, and there is no satisfactory method by which he can find out its quality. He is depending on what is generally common gossip, Jones says that Brown is a great physician; that is a matter of opinion and Jones' opinion may not be a very good one, it may be that he has not seen much of him professionally; it may be that they are two personalities who get along extremely well, that Jones likes him but as a matter of fact Jones may be mistaken in believing that Brown is a good physician; I doubt myself the accuracy of freedom of choice. I think the average layman will get a better article in group service if he makes his choice in hospitals and groups.

In Poston there are three or four large hospitals between which a patient might make a choice; if an individual requires hospitalization he makes a choice from one of those hospitals and having done that he feels that he has put himself in good hands. That has always occurred in the Mayo Clinic. The patient doesn't go there to see any particular physician; they have reason to believe the Mayo Clinic provides a good article of care and when they get there they normally are assigned to a physician, more or less in rotation, according to who is busy, and always to a general physician. I think that kind of choice which the average layman has is more likely to be right than if he undertakes to seek individual physicians and then the consultant. I should like to provide a situation where freedom of choice might be an informed choice. I think they hit upon this method at a time when conditions were not what they are today and that the patient's selection under present-day conditions is becoming less and less accurate. Even if freedom of choice should be defined to be a capricious freedom of choice, still I do not think that there would be anything in group practice which would interfere with it. In most well organized groups there remains a great deal of choice. Normally a patient is referred to one of the general physicians. It is within my knowledge that patients don't always get on with the particular physician, and if he ex-

presses a desire to see someone else, he is referred to another physician in the group; he has made his choice in that group. If he desires to consult another physician outside the group he may do so, as there is no method by which you can limit him. A patient who is told by a hospital that he may not have the doctor that he wants obviously does not enjoy freedom of choice. If one of these members of a group goes to a hospital and is told that he cannot have the group doctor but must have one of the staff doctors of the hospital, that would be a limitation of freedom of choice. If the AMA takes upon itself to pass a rule that no doctor shall treat his patients in any of its approved hospitals except its own members, that rule limits and interferes with freedom of choice.

I have seen something of the workings of Group Health. I knew a little of their plans in advance, and expressed some opinions and I came down here and went over the layout with their staff; I shouldn't regard myself as having a very complete knowledge. In 1937 I had some correspondence with Mr. Zimmerman and Mr. Kirkpatrick; then I came down here and went around and saw the staff and saw them at work and had some discussion with members, I suppose of the Board of Trustees. Group Health is the consumer type of prepayment plan. That is a group in which the initiative comes from the group of patients, who undertake to arrange for a medical group which will do the work. I am not sure of the accuracy of my information; I was more interested to see whether this outfit with a clinic seemed to me to be doing a decent job than with the question of organization, which wouldn't seem to be much of my business. I came to the conclusion at that time that they were equipped to do satisfactory work and that the four or five physicians whom I actually saw at work in seeing patients were doing very well. I saw the clinic itself and inspected the equipment. The clinic seemed to be well regulated with the flow of people. I didn't find overcrowded waiting rooms and the thing seemed to be moving smoothly. I assume that it was a fair sample of an average day. They had at that time the proper space, and I might say the proper equipment to deal with that group of patients. They had laboratories and X-ray machines and things of that sort and there were doctors on the group staff making common use of those facilities.

Each properly organized group practising on the prepayment basis is certainly a method of diminishing the average cost. In a year it may not diminish the cost, but on the other hand, in another year it may be only a very small fraction of the cost which that patient or some of them would have incurred. On the average taking it over a period of years I am satisfied that that method of payment would decrease the cost of the average family to obtain good medical care. There is nothing inherent in group practice that will keep the physicians from having themselves subject to the call of their patients so that they will be available to render care to their patients at all hours. My experience with the group is that it is easier to get them after hours than it is the practising physician.

The AMA is a national organization in which membership is obtained through a state society, and membership in the state society is obtained by membership normally in a county society. Here in the District of Columbia there are of course no counties, but normally the county societies take on their members. A young physician applies for membership and unless there is some objection he is accepted. He becomes by that act a member of the state society and a member of the AMA. The AMA is very large; it includes a large majority of the physicians of the country, 110,000 or 115,000 or probably more out of something like 160,000. There is no comparable medical society either in size or activities in the United States. It is in the business of publishing a journal and there are important things which would look like business to me and there are undoubtedly a large number of employees who are not professional people and I assume that to be a business relation. They are in the publishing business as one of their very important activities. A considerable group of doctors of medicine are employed not to treat patients, but on a salary basis to carry out the policies of the AMA. The AMA does not have local societies but the state societies are described as constituent societies. Each state has such a society. The AMA has a Board of Trustees; it has a House of Delegates which is made up of members from the state societies elected from the state societies in general proportion to the number of physicians who are members of the state society in that state. The House of Delegates meets ordinarily once a year and in them ultimately resides the power which they dele-

gate to various people. The Board of Trustees is elected by the House of Delegates and has certain powers which it may exercise between the annual meetings of the Association. The House of Delegates also elects the members of various Councils which carry on a great deal of the important work of the Association. Some of these Bureaus and Councils are the Bureau of Legal Medicine, and the Bureau of Medical Economics. The term medical economics has been used for more than twenty years and embraces the economic problems which are peculiarly applicable or more than ordinarily applicable to these problems which come up in the practice of medicine. The function of the Judicial Council of the AMA is to pass on questions referred to them by their state societies.

The state society has taken action and would like to have that action refused or approved or disapproved. I don't think the Judicial Council can deal with problems of an individual except as brought through a constituent assembly. They frequently render opinions at the request of the House of Delegates on problems upon which they hold an opinion on semi-judicial questions. I do not think that the AMA has any control over who remains a member of the local medical societies in the first instance. The problem of the local medical society is to deal with its own members; then either party aggrieved may appeal that decision to the Judicial Council and the decision of the Judicial Council as to whether that man may remain a member or not is binding upon the local society.

Gov. Ex. 2 was received in evidence but not read. (This is a stipulation that certain publications of the AMA may be offered in evidence.)

Gov. Ex. 3 was received and read in evidence as follows: Excerpt from a pamphlet entitled 'Proceedings of the House of Delegates of the American Medical Association, the 89th Annual Session held at San Francisco, California, June 1938' as follows:

"The general work of the Association. The year covered in this report—that is 1938—of the Board of Trustees has been characterized by a very notable expansion in the activities of the various councils, bureaus and departments of the Association until, at times, available facilities have been seriously strained. A constantly growing interest on the part of the general membership in changing social con-



ditions; increased efficiency of medical organization in counties and states throughout the nation; a more active and intelligent interest on the part of the public in matters pertaining to public health and medical service; legislative activities in the states and in the federal government; the consideration of important questions pertaining to medical education, hospital operations and the extension of public health programs; greater financial and administrative participation on the part of the federal government in public health affairs in states and in communities; proposals for the development of medical and hospital service plans for the benefit of the members of low income groups and actual operation of such plans, and a notable increase in the number of members of the Association together with many other important factors have brought into the headquarters offices a veritable flood of inquiries and demands for information and service. An earnest effort has been made to meet such demands as fully and as helpfully as possible. (58-59-60)

### Business Operations

The official Report of the Treasurer and the official Report of the Auditors are submitted to the House of Delegates as a part of this report of the Board of Trustees.

The gross earnings for the year ended December 31, 1937, amounted to \$1,654,203.74 as compared with \$1,547,218.23 in 1936. Operating expenses were \$982,830.10 as compared with \$909,417.95 in the preceding year. Association expenses including expenditures incident to the operations of councils, bureaus and departments amounted to \$431,635.63 as compared with \$411,028.93 in 1936, while miscellaneous expenses for the year 1937 including insurance and taxes, building expenses and depreciation, fuel, legal services, and the cost of sundry publications amounted to \$218,601.19 as compared with \$209,382.37 in 1936. The net income for the year was \$122,242.92, of which sum \$83,563.74 represented income from investments, so that the actual net operating income was \$38,679.18.

While only a few of the bonds owned by the Association have defaulted in the payment of interest, there has been a rather serious depreciation in the market value of some of the securities held. The Board of Trustees, the Treasurer and the General Manager of the Association have sought



the best available advice with respect to investment of the Association's funds. In accordance with the situation that generally prevails, the average interest return on invested funds has been decreased because of the substitution of securities bearing lower interest rates than those which formerly obtained.

The payment of wages and salaries, exclusive of those involved in the operation of councils and bureaus, amounted to \$460,182.01 in 1937 as against \$443,693.17 in 1936. Increased labor costs in effect during the latter part of the year accounted for most of the increase in this item, and notification has already been received to the effect that these costs will be further increased during the current year. The cost of paper in 1937 was \$241,663.85 as compared with \$208,922.37 in the preceding year. These costs would have been considerably larger except for the fact that the fullest possible advantage was taken of the opportunity to purchase paper stock before material increases in the market price went into effect. The sum of \$97,274.89 was expended for postage in 1937 as against \$92,123.08 in 1936.

Fellowship dues and subscriptions paid in 1937 amounted to \$670,170.31 as compared with \$638,243.18 in 1936, the increase being due, principally to increased circulation of The Journal and to a rather notable increase in the number of Fellows enrolled. Total receipts from the sale of advertising space in Association publications were \$841,042.57 as against \$780,299.01 in 1936.

The number of employees at the time of the preparation of this report was 616.

The purchase of some new machinery and equipment, contemplated when the last annual report of the Board of Trustees was submitted to the House of Delegates, was deferred, in part for the reason that some of the machinery that must be purchased will have to be newly constructed and in part because some of the older machinery which it had been intended to discard was repaired or partially rebuilt so as to extend its usefulness. It will be necessary to install some new machinery in the printing department during the current year. Increased activities of the councils, bureaus and departments of the Association have required the purchase of a considerable amount of new office material. (58-59) (60)

In the Report of the Treasurer and in the Report of the Auditors, submitted herewith, will be found more fully itemized statements of income and expenditure.

### Summary

Gross earnings and miscellaneous income were larger in 1937 than 1936, while operating and miscellaneous expenses were also considerably larger. Income from investments was slightly larger than in 1936. The net income for the year was \$122,242.92, of which amount \$83,563.74 represented interest on investments and \$7,453.20 represented miscellaneous income.

### The Association Building

The experience of the past year has fully justified the action taken by the Board of Trustees whereby the entire building was remodeled and two new stories and an assembly hall were added. Better working conditions have been afforded in all departments, and it has been possible by reason of building expansion to bring closer together councils and bureaus whose work is closely correlated and thereby to avoid unnecessary duplication of effort and to increase efficiency.

Many commendatory expressions have been received concerning the beauty of the Association's building as it now stands. The Board of Trustees would urge the members of the House of Delegates and the members and Fellows of the Association who may find opportunity to do so to visit the headquarters office to see at first hand the nature and the scope of the work that is being prosecuted there (59) (60).

### The Journal of the American Medical Association

The place held by The Journal of the American Medical Association in the field of medical periodicals is now so well established that it is unnecessary to offer comment on this point. Nevertheless, the publication has not been static. It has developed a new series of articles on the relationship of the pharmacopeia and the physician. It has continued its campaigns against mortality from typhoid and from diphtheria and has reestablished the campaign against Fourth of July accidents.

The publication formerly called the Bulletin of The American Medical Association is now fully incorporated in The Journal as the Organization Section. Here special attention is given to problems of organization, to medical economics, to reports of activities of various councils, bureaus and departments, and to the work of the Woman's Auxiliary. The value of this week by week circulation of important information in the field of economics and of organization for the maintenance of interest of the individual physician cannot be overestimated. Because of the significance of this material, the Board of Trustees would recommend that it be placed in the center of The Journal, and incorporated as a regular feature on medical economics."

Gov. Ex. 4 was withdrawn by Government counsel after an agreement between Government counsel and defense counsel pursuant to which agreement Government counsel stated to the jury that the following is admitted; "Defendant American Medical Association maintains a Bureau known as the Bureau of Medical Economics which concerns itself with economic organization of the practice of medicine."

Mr. Lewin. I now offer in evidence under the same stipulation excerpts from Proceedings of the House of Delegates of the American Medical Association, 1931, appearing on page 4 thereof and headed "Bureau of Medical Economics," and also appearing on page 24 thereof headed "Hospital and Health Associations."

(Counsel requested permission to approach the bench.)

Mr. Lewin. If Your Honor please, this goes a little further and shows the nature of the Bureau of Medical Economics and tends to support this.

Mr. Leahy. I call attention to the date, which is 1931. We think that is too remote, antedating the charge in the indictment. These are generalizations from reports relating to general matters throughout the United States, and they cannot affect the specific and particular charge in this indictment, and they do not assist in any way in the background.

The Court. What allegations do they relate to?

Mr. Lewin. They relate to the next allegation.

The Court. This is to show that they had such a policy of objection?

Mr. Lewin. Yes.

Mr. Leahy. I submit that it would not be relevant on that point at all.

The Court. Of course I have not read it.

Mr. Richardson. There are sixteen local defendants here being tried on a conspiracy alleged to have arisen after the first of Jan., 1937.

The Court. I will not read it unless it is necessary, but if it has any tendency to prove a policy of that sort on the part of the AMA I think it would be admissible, because, apparently the Court of Appeals has said that the recital of the background is proper; I am sure I am bound to accept that background as I see it. My chart is the Court of Appeals' decision, and I must follow that. If it has that tendency, then I think it would be admissible.

Mr. Leahy. May we have an objection running to this character of testimony antedating the indictment?

The Court. On the ground of its remoteness?

Mr. Leahy. On the ground of its remoteness and its irrelevancy and not being binding in any way on the defendants.

The Court. It is only admissible as to the defendant American Medical Association.

Mr. Leahy. Then we can make the objection and take the exception instead of continually delaying the trial.

The Court. Yes; upon that allegation.

The Court. I wish, gentlemen, if you have any other ground of objection you would call it to my attention.

Mr. Leahy. I will.

Mr. Leahy. Does that run to the same thing?

Mr. Kelleher. It goes to the competitive allegation of the indictment.

Mr. Leahy. What do you mean?

Mr. Kelleher. The allegation as to competitive reasons. This is all background.

Gov. Ex. 5 was received in evidence and read against the AMA as follows:

Excerpts from Proceedings of the House of Delegates of the AMA, 1931.

### **"Bureau of Medical Economics"**

The Bureau of Medical Economics is just being organized and ultimately will have all available information regarding the cost of medical care. So much misinformation regarding economics is being broadcast that it is certainly our obligation and responsibility to set this aright. This means a great deal of study and work, and is a task for those who have had much experience in these activities. There are few actual practitioners of medicine on the five-year committee on the costs of medical care. The statistical work of the committee has been tremendous, and a great deal of information will be available. It seems to me that a bureau made up of men from the Association would be better able to put the proper interpretation on the findings of this committee than would those in Government and public health work alone. This bureau must have the best man power that can be obtained."

### **"Hospital and Health Associations"**

In reports previously submitted to the House of Delegates, the Council has referred to organizations controlled by groups of laymen, or by individuals, offering medical and hospital service to any who will buy 'membership' and pay a nominal sum each month as 'dues.' Such schemes have been put into operation in various places and have failed within a few weeks or months because of inadequate income or because of failure to render good service. The Judicial Council has regarded these schemes as being economically unsound, unethical and inimical to the public interest.

Within the last year, some community hospitals have announced their intention to provide medical, surgical and hospital service to families on a flat rate basis. In at least one instance, such service has been offered to families for \$35 a year, irrespective of the number of members in such families. In most instances, certain exceptions are made in that persons with chronic diseases are not entitled to receive the benefits of the plan and obstetric service is not supplied without additional compensation. The members of the Judicial Council doubt that it is wise to lead the people in any community to believe that all necessary medical and hospital service, even though chronic diseases and obstetric care be excepted, can be provided for the average



family for \$35 a year." In the cases presented to it the Judicial Council has advised against the adoption of such plans by community hospitals because it is believed that they are not economically sound in that they may be unfavorably affected by conditions entirely beyond control under which contracts cannot be fulfilled. There are other aspects of the matter that readily present themselves for consideration involving the interests of physicians in the community who cannot participate in such plans."

Gov. Ex. 6 received in evidence and read against AMA, as follows: Excerpts from Proceedings of the House of Delegates of the AMA, 1932:

#### "Bureau of Medical Economics

##### Purpose, Functions and Method of Procedure.

Immediately following the establishment of the Bureau in March, 1931, the director formulated an outline of the purpose, functions and methods of procedure of the Bureau and the phases of medical economics in which work should be initiated as soon as possible, to serve as a guide for both study and administration.

The Bureau of Medical Economics is established to study all phases of general economics that have a bearing on the practice of medicine. In every consideration of medical economics it must be remembered that: 'A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration. The practice of medicine is a profession.' Although business methods and economic principles are essential to an orderly conduct of the financial phase of the practice of medicine, all such methods and principles must serve rather than dominate the profession, must be secondary to the primary object of the profession, and must conform to the accepted principles of medical ethics.

The principles of medical economics, as they become established, should serve the profession as a sound guide in business and economics; they should never be perverted to defend even the border-line actions of the near charlatan.

The functions of the Bureau of Medical Economics are: (1) to collect, tabulate, study, criticize and prepare for publication and distribution data pertaining to the economics of the practice of medicine; (2) to furnish critical and con-

structive information and opinions by correspondence on the several phases of medical economics; (3) to encourage the adoption by individual physicians and medical societies of modern, sound, ethical business methods; (4) to urge medical schools to provide medical students with information concerning the economics of medical practice, and an outline of essential business principles which should be incorporated early in individual practice; (5) to develop, ultimately, a consultation service with respect to medical business methods.

The Bureau will endeavor to collect data on the following phases of economics:

- Capital investment in medicine.
- Care of the indigent sick.
- Collection methods and agencies.
- Contract practice.
- Costs of medical education—students' expenditures—complete cost.
- County and city dues.
- Dispensaries and clinics.
- Distribution of physicians.
- Distribution of medical facilities.
- Evaluation of patient's ability to pay.
- General insurance for physicians.
- General investments.
- Group practice.
- Health and accident insurance.
- Industrial medicine.
- Instruction in medical economics (college and extension courses).
- Malpractice insurance.
- Medical fees.
- Office plans.
- Office systems.
- Panel systems (of foreign countries).
- Physician's income.
- Sickness financing.
- Sickness insurance (compulsory and voluntary).
- Sickness savings.
- Sickness statistics.
- State, county and municipal health department activities.
- Thrift programs.
- Workmen's compensation.

and such other phases of medical economics as may from time to time properly come within the scope of the Bureau's activities.

Opinions on specific, individual or local professional economic problems should be guarded or tentative until a general principle shall have been established to govern in the consideration of each special phase of medical economics. In all phases of the general subject in which the experience of large non-medical groups has led to the adoption of definite economic policies, due consideration will be given such findings and policies when seeking to establish economic principles for guidance of the medical profession.

Every question pertaining to medical economics will be considered impartially and without personal bias. Courtesy and fairness, with non-medical groups that touch some phase of medical economics, must mark every step of progress.

Policies and principles established after careful deliberation, supported by factual evidence and, wherever possible, by parallel procedures in the business, industrial or commercial fields will thenceforth govern in similar questions and situations.

When considering the economics of medical care, one must make a clear distinction between commercial and economic interests. Commercialism is characterized by: (1) unreasonable fees; (2) alleviation always predicated on cash in hand or no service; (3) unethical tendencies or practices; (4) destruction of scientific motive in both the individual and the profession at large; (5) transformation of the profession into a trade or business; (6) destruction of confidence in the profession; (7) an insidious tendency toward state medicine. Economics as applied to medical practice is predicated on sound ethical principles, constructive and reasonable: (1) alleviation of suffering, prevention of disease, pursuance of research and the dissemination of dependable information are recognized as the primary obligations of the profession; (2) there should be a just compensation for service rendered; (3) modern ethical business methods are necessary to provide the highest type of service at the most reasonable cost; (4) ethical business methods insure confidence in the profession; (5) correct economic measures insure adequate amount and quality of service to indigent as well as pay patients; (6) the use of ethical business methods and correct economic measures

serve to promote in the profession higher scientific attainments because of greater freedom from financial anxiety.

Detailed methods of providing the most economic medical service to both indigent and pay patients must differ according to local requirements, but the principles and policies governing the application of these methods must be universally applicable.

In many phases of medical economics, physicians must act as an organized group in order to accomplish the most worthy ends. Individual action along these lines will not be as effective or as free from error as collective organized action.

Whenever legislation limits or obstructs the most effective economic and high grade medical service, efforts must be made by organized medicine, after thorough study of the subject, to remove such limitations or obstructions.

New methods of providing medical care should be adopted only after a careful and thorough study of present medical facilities and the requirements for additional facilities. Duplication of effort and overhead expense is a principle diametrically opposed to correct economic methods."

The examination of Dr. Cabot was then resumed and he testified as follows:

I would regard it as perfectly proper for one of these group prepayment plans to seek consultations with other doctors outside of the group in serious cases; this has been the practice of various groups; I should think it would be highly desirable. I would consider it perfectly proper for them to seek such consultations with members of the AMA even though they might not be members of the particular group staff. If they were not they would be very limited in their consultations because a vast number of the physicians of the country are members of the AMA. I know of an instance in the State of California in which the AMA has indicated an attitude towards group practice on a prepayment basis. I have knowledge of an incident in Texas with regard to the attitude of the AMA towards group practice there. I gained that knowledge as the result of a decision of the Judicial Council made in a case coming from the State of Texas. I don't know specifically any incident in which the attitude of the AMA was manifested towards group practice in Arkansas. I have knowledge

only through documents but no personal communications concerning an incident in Miami, Florida. I have had in my own medical and surgical association in Boston no controversy with the AMA.

#### Cross-examination.

By Mr. Leahy: .

I graduated in 1898 and before I graduated I went to the Massachusetts General Hospital, where I stayed fourteen months and in the meantime was teaching at Harvard and assisting my cousin, Arthur Cabot. From the Massachusetts General Hospital, I went abroad for about three years and when I returned I went to Michigan and from Michigan to the Mayo Clinic and after retiring from the Mayo Clinic back to Boston. I returned to Boston in 1938. While at the Massachusetts General Hospital, all appointments for the staff were made by the Board. Courtesy staffs originated after I left Boston; and while at the Massachusetts General Hospital any doctor who was licensed to practice his profession did not have the right to care for patients in the hospital. It was a closed hospital, with a staff appointed by the Governing Board and they were the only people who practiced in the hospital. There were no private patients in the Massachusetts General; and I don't think there could be legally at that time; a closed staff was the rule in those charity hospitals in these days. The hospital was a very old, chartered institution, with an original grant from the State, which resulted in the Governor appointing three out of nine of the members of the Board of Trustees. The hospital was supported by contributions and was a charity of the City of Boston. The Mayo Clinic was composed of a group of doctors, experts each in his own line. It was founded in 1887 in Rochester, Minn., and, while I was there, the clinic had 110 or 120 physicians on its staff. The only group notion about the Mayo Clinic is that it was a group of experts who had established themselves in Rochester and to whom patients who desired their services came for treatment. The clinic did not own its own hospital and it was operated as an entirely separate matter. The clinic neither owned nor operated any hospital, though it had its own equipment in its laboratories. The Mayo Clinic was not a consumer



clinic; it was just a group of excellent physicians or surgeons located at Rochester, Minn., who, by their skill and reputations now have people coming from the United States and, perhaps, the world for treatment. Anyone can go to the Mayo Clinic and demand their services at any time, and such treatments as are received are paid for by the patient and, if a patient were sent by the clinic to a hospital, the patient would pay the hospital and not the clinic. The Mayo Clinic does charity work also and work for medical indigents, that is, people who may not be paupers but who do not have available funds to pay for medical care. The founders of the Mayo Clinic were Charlie and Will Mayo. They were members of the AMA and both of them became presidents of the AMA years ago and at present there is a son of one of the original Mayo's at the Mayo Clinic and he is a member of the AMA. At present a considerable group of physicians and I have agreed to care for a group of patients in Boston and the doctors in this group also practice privately. The doctors as partners, five of them, asked a group of younger men to work together as a group and we stated that we would be glad to take as an associate physician any physician who is licensed to practice, who is a member of the Massachusetts Medical Society and of the AMA, having courtesy privileges at a hospital approved by the Council on Hospitals of the AMA. In that way the group thought it could certainly secure for its patients a group of physicians not the worst in the State, and agreed to accept as consultants in any field anybody who held a certificate from these modern certifying boards which have grown up in the specialties with the approval of the AMA. Of course, we also accept as consultants younger men who could not yet become certified but who within our knowledge or the knowledge of our associates are capable to the extent of their age and size. At present I do not enjoy hospital privileges at any hospital in Boston as I have had no occasion to treat private patients, though I felt that if I had occasion to treat patients I could do it at the Massachusetts General hospital or the Phillips or the Faulkner. My associates have privileges to use the hospitals, because the group will not take anybody who does not have access to a hospital and who cannot follow his patients to the hospital, as we do not believe it is sound practice to have a patient separated from his physician just because the physician has no hospital privileges. There are other organi-

zations or clinics similar to the Mayo Clinic near Boston; one is known as the Leahy Clinic.

I first joined the AMA in June, 1899. I have tried to follow the history of the AMA and have spent a great many years reading the Journal of the AMA, and it is, undoubtedly, today the most important medical journal in the world. I belong to my county medical association and to my State association, which are component and constituent associations of the AMA. The jurisdiction of the Judicial Council of the AMA is limited in a sense to appellate jurisdiction; I do not think that it originates anything. If a member of a local society is expelled, he may go on appeal to the state society and after that take an appeal to the Judicial Council. In other words, before a member is expelled from a medical society, he has the protection first of his own association, then of the constituent state association, and then of the Judicial Council of the AMA. In such matters the AMA itself does not originate the charges. The county association is subject to its own state control as it is a subdivision of the state society, and, with reference to its own local affairs, it elects its own membership and within the rules laid down by the state society as to who may be admitted, the county society may admit this membership as it sees fit and elects its own officers.

With reference to group practice, consumer group practice, there are but a very few consumer groups as they are a recent development in the group field, and by consumer group is meant a group of individuals who buy medical service. While the principle, on a little different setup, was tried in Europe, there are relatively few such groups in the United States. I first recollect seeing the Group Health in Washington in the autumn of 1937 or the early part of 1938 and that I first knew about it during the year 1937. At the request of some member of the association, either Kirkpatrick or Penniman, I met with these gentlemen in Washington and I spent three or four hours at its clinic, stayed overnight and discussed the clinic during the evening; I only went into the business organization of the clinic so far as to note what their scale of charges was and came to the opinion that, with a reasonably large group of subscribers, the amount of money they would have would be sufficient to enable them to carry on. I was impressed by the fact that at the time the number was not large enough to make certain; that if it would not grow, that it

could carry on and render the kind of service intended. They needed a thousand subscribers of fixed incomes. I believe that the subscribers would pay \$2.00 per month or \$25.00 per person a year; that on that basis I thought The clinic could be operated at about \$25,000 as an irreducible minimum. Though such things don't start in a vacuum that amount would be sufficient to enable them to carry on according to their program and not be worried as to whether they were going to get by. On my visit I went around from one department to another inspecting the equipment and thought it sufficient; I wasn't informed or concerned as to where the funds came from to buy the equipment. Subscribers might have dependents and these dependents might pay a sum less than the subscriber and I only went into the financial side in very general terms, as I was chiefly interested in ascertaining whether or not a good job could be done there. The surgeon at that time was Dr. Selders. Beyond that experience, other than correspondence and publications, I never made a further study of Group Health. When I first saw it, it was operating, and I have never been in the clinic since that time.

I have felt for many years very strongly that any doctor licensed by the state to practice medicine ought to have hospital privileges. I do not know of any state, city or hospital where my thought was put into effect. All hospitals with which I am most familiar have the staff look into the qualifications of an applicant for the governing board and the application is usually acted on as the staff recommends to the board. I am a firm believer in putting them on the staffs, especially younger men, and letting them develop. On general principles, if a doctor had just graduated from a residence service, had been licensed to practice, and should seek the right to practice general surgery of all kinds in a hospital, he should demonstrate his ability before being put on the staff and I am skeptical about the hospital giving that person the right to perform any and all kinds of operations, explaining that he should do lesser operations first and then those of moderate severity, so that the hospital staff could see how he actually behaved and performed, as you wouldn't want to give privileges of practicing on mankind unless the man was a trained man, of which the hospital had plenty of knowledge. There are people who by reason of their residence training are entirely qualified by that training alone. Where there was a question of the

legality of the practice of a given physician, it would sound reasonable for the hospital staff to hold up his application for privileges until that question had been determined. If a doctor had been notified by the Federal District Attorney to desist from a certain practice and that doctor had asked for general hospital privileges, it would be good, reasonable advice to advise the hospital that it should withhold privileges pending the determination of the question.

I don't know what is meant by the terms "adequate medical care" or "complete medical care" and I don't think anybody knows their meaning; complete medical care means the medical care covering the whole field of preventative medicine, diagnosis and treatment in all fields and is all-inclusive; it means that there is no condition from which the patient complains which you will not treat him for. If I felt the quality of medical care of an organization was not good, I would not think it would be in the public interest to operate an organization rendering such care. The question of good medical care must necessarily be determined by a group of medical men; I saw two physicians at the Group Health clinic; they seemed to be doing a pretty good job and I observed no over-crowding in the waiting room. The patients seemed to come along in reasonable sequence and the organization seemed to be taking care of the patients at a reasonable rate. I said this morning that I think I rendered better service or that a man could render better service where he was engaged with a group, than he could individually. I can compare it with the conditions under which I worked in Boston and Michigan, which was frankly group work, and at Rochester. In the first place there was no waste motion; no loss of time, going from one patient to another, from hospital to hospital, a tremendous amount of wasted motion in the earlier days. Then I was constantly unable to get prompt opinion or advice when I wanted it. In the group there was close articulation between yourself and the other physicians and specialists; and then quite clearly I was free from the feeling that I had to pay any attention to the financial or economic status of the patient. I had no worry at all whether this patient, if I told him something he didn't like, whether he would go to somebody else and not pay his bill. Working in a group that feeling is entirely removed and I feel very clearly and so felt that I could give a very straightforward opinion; it is on sounder ground in treating and in viewing the

patient in whom I had no financial or economic interest, they were just sick people to me to whom I gave my opinion, I did the best I could and if they didn't like it they could throw me out of the clinic, but I could be honest. No matter what the group is, producer group or consumer group, whatever staff they hire should be competent and if a competent staff were not there to render the service they claim or offer that group would not be operating in the interest of the public; a proper staff in a group depends on local conditions, how large is the group of subscribers, at what distances do they live away from the clinic and away from each other; I don't want to put the size of the staff entirely on the basis of the number of patients. I should think it would be possible to have a standard consumer plan which would give complete and good medical care. A committee from the eastern part of the country spent a good deal of time in trying to draw up principles from which a guide could be made on that subject; Michael Davis was chairman of that committee and we spent a good deal of time associated with groups and we drew up what you might call a draft of the salient features of the plan. Some of the members of the committee were Michael Davis, Kingsley Roberts, Clifford Loos, Allan Butler and Ogden. The group was a committee of doctors. I do not think a committee of laymen would be able to formulate a plan for the distribution of medical care without consultation with doctors. While I was in Washington I did not examine any other clinic similar to Group Health or any of the industrial clinics.

Since I started to practice, hospitals have advanced to a marked degree of efficiency. It is a responsible thing, one of the most important responsibilities an ordinary layman can take on, to operate a hospital under proper standards of care. In general terms a hospital cannot satisfactorily train internes unless it is of considerable size. Graduates of medical schools, while they require more experience, are relatively, fairly well equipped, much better than they were forty years ago to treat patients. Twenty-five years ago there were about 120 to 130 medical schools in the United States and there are approximately 72 or 73 today; and this occurred because a great many schools were giving a poor article of education and the issuance of a report of Carnegie Foundation had a profound effect on the American Association of Medical Colleges and the AMA, which or-



ganizations brought pressure which resulted in the disappearance of some schools and the consolidation of others. The 72 schools still training doctors are Class A. The AMA has been interested in seeing that proper standards have been maintained for the training of internes in hospitals for at least fifteen years, while its interest in medical schools dates much farther back. The American College of Surgeons has since 1920 been interested in seeing that hospitals have proper equipment. It is certainly to the public interest that a group of experts such as the AMA should be interested in the conduct of hospitals. I believe that the public responsibility for the conduct of medical schools remains in the university and cannot be transferred to any other body, though it is in the public interest for the AMA to do the best it can to see that those standards established by those schools are high and in the public interest. I have never inspected the local hospitals in the District of Columbia, and I do not have a wide acquaintance among the members of the local medical society and I do not have any available information with reference to the number of doctors in the District of Columbia or how they are divided so far as area is concerned.

#### Redirect Examination.

In my opinion the standards which the AMA should be interested in, in order to be in the public interest are those which pertain to the study and care of patients. In that field they are undoubted experts. In other fields they might not be experts, but whether a given hospital is equipped and does in fact give good care to patients, is very much the business of a large and well developed medical organization. It does not occur to me that a professional association can control a hospital. The control must remain with the lay board. The lay board will naturally give great weight to the opinion of a professional association on professional questions, but there could be no question of control. The approval by the AMA of a hospital for interne and resident training is a very important thing to the hospital, because it establishes with the public the fact that this hospital is an organization that has equipment and staff which will authorize you to assume that it will give good care.

Q. You testified, Doctor, that it was in the public interest for the AMA to take an interest in hospital standards. Now

I ask you whether it is in the public interest for the AMA to insist, as a condition for giving its approval to a hospital, that all of the members of the staff of that hospital be members of the AMA?

Mr. Leahy: Objection.

The Court: You have drawn in the public interest in your own questions, Mr. Leahy. I think perhaps it is proper.

Mr. Leahy: It is secondly objectionable because of the use of the word "insist."

The Court: I do not know what significance that word may have. The witness may answer the question.

Mr. Leahy: Exception, your Honor.

A. I should be very doubtful as to whether any professional group ought to be in the position to declare that its members only are competent people in the profession. It is entirely within my knowledge that able physicians have gone on for years, or for their lifetime, without being members of the American Medical Association. So I should be very fearful of giving to any professional body the right to say that their members and their members only were capable of giving good care. I think it is risky extension of power to any group.

The AMA has a very important interest in the character of the staffs of a hospital; it has a machinery to inspect and examine these hospitals, which can only be done by some well organized group. The AMA has a staff of expert people who spend a great deal of their time and come to know a great deal about technique in studying hospitals, and, as a group of experts giving advice to governing bodies, the AMA has a very important function. They can safely give nothing but advice because the control must lie with the governing board and cannot safely lie with a professional group.

In the matter of the question of passing on the application of a doctor for hospital privileges, if I had received notice of the objections of the District Attorney in that case to the group with which the doctor was associated or that the group was a corporation practicing medicine without itself having a license and was engaged in the insurance business without complying with the law, such a situation would present a very difficult question. The opinion of the District Attorney could not affect my opinion of the capacity of an applicant, which must depend upon his professional

qualifications and not upon intricacies of the law, which do not run at all to his ability to look after sick people. Under such circumstances, in advising the hospital in regard to the admission of this physician for courtesy staff privileges I would advise the hospital to entirely disregard the opinion of the District Attorney and examine the qualifications of this physician who was a candidate for their staff. By qualifications I mean professional qualifications.

Q. Just what did you mean when you answered Mr. Leahy's question on Friday in the way in which you did?

A. Perfectly frankly, I misunderstood him. I understood the charges against this hospital were of an entirely different character. Let us be perfectly brutal and frank about it. I thought it was charged that this was an abortion.

Q. And it was on that assumption that you gave the answer which you did give?

A. Right.

If the District Court of the United States had decided that such charges were unfounded, then any possible disability to the applicant would be removed. If an applicant for courtesy staff privileges had graduated from the University of Oklahoma or the University of Oklahoma Medical School, had practiced privately in one of the large cities of the United States, both medicine and general surgery, for nine years, that, thereafter, the applicant had enrolled as a post-graduate student of surgery in the University of Pennsylvania and completed satisfactorily a two-year post-graduate course and received a degree of Master of Medical Science, and, further, that during the two-year course the applicant held a residencship in surgery at the Worcester City Hospital under a preceptor appointed by the post-graduate school of the University of Pennsylvania, and during such residency performed satisfactorily to his preceptor, several hundred operations, some of them major and some of them minor, some of them in which he acted as an assistant and in some of them he took the lead, that a great deal of that surgery was abdominal or pelvic surgery, I should feel required to admit such surgeon to the staff of a hospital to practice general surgery, with reasonable limitations as to the more difficult and trying situations. The fact that that applicant happened to be the general surgeon for a large group of patients associated in a prepayment clinic would have no bearing on the question, as

I would be concerned only with the doctor's qualifications. I would not hold it against the applicant if he asked for broader privileges than would perhaps be accorded to him.

Q. And do I understand you would recommend to the staff to admit him to those privileges to which you felt he was by reason of his training entitled, and deny him those privileges for which you felt he did not have adequate training?

Mr. Leahy: Objected to.

The Court: He may answer that question.

The Witness: Oh, yes; I have no doubt I should do that.

The formation of the consumer type of group practice involves two or three very different problems, financial and economic. In those problems the group should try to obtain wise counselors in those fields from laymen. In so far as the medical organization, equipment and medical capacity are concerned, clearly the medical profession are the only experts on whom the community may rely in those special fields. Clearly no one else is qualified to speak concerning them; I would seek no other advice from medical men. As conditions vary in different parts of the country, you cannot make the same organization work equally as well under such varying conditions, and, in financing such a group, laymen probably would be consulted; lawyers would be consulted in the preparation of the contracts of the group; known existing practices of similar organizations should be examined. If a group undertakes to do a definite thing, provide medical care for its subscribers, the fact that it does not undertake to do charity work does not mean that such a group is against the public interest nor unethical. The fact that a doctor associated with a group devotes himself to the group without bearing any part of the care of the indigent, does not mean he is neglecting his share of the responsibilities of the medical profession for the indigent. The "fee-for-service" doctor can afford to do charity work by levying a tax upon a small class known as rich; this gives him funds on which to live in a decent fashion and care for a group of people who can contribute nothing. Certainly no stigma is attached because he practices on patients who have subscribed to this organization when the group doctor applies for hospital privileges. When I said the Journal of the AMA was an outstanding medical journal of the world, I was thinking of the Journal as a whole. In recent times a

subordinate section of the Journal has dealt with problems rather loosely referred to as medical economics and in that section a different policy has been adopted. Many articles are prepared by the salaried staff of the AMA. Often for the purpose of producing a perfectly definite point of view, which may or may not represent the scientific view, there has been allowed no opportunity for discussion of the presentations. Many of them, in my judgment, and in the judgment of a good many other people, have been a pretty incomplete statement with very important omissions, and yet, they are the source of information of a large number of busy physicians who cannot possibly go to original sources. I have felt very strongly that it was essential that there should be a possibility of pointing out these omissions and weaknesses, and the differences of opinion which has been done regularly in the scientific portions of the Journal. This has been frowned upon and has been, I think, a very serious detriment to the proper presentation of the facts in these fields. I would go so far as to say that there have been many articles published in that section of the Journal which would not stand up under criticism a moment and which if presented to a scientific body would be torn limb from limb.

In the matter of appeal to the Judicial Council, the expulsion of a member does not really "stick" until it has been passed upon by the Judicial Council. The rules and principles of medical ethics of the AMA are promulgated under the authority of the delegates of the association and such rules are intended to be binding on local societies. On various occasions questions concerning their interpretation have been referred to the Judicial Council. When ethics which are supposed to guide a profession undertake to invade fields in which the profession cannot have particular knowledge, you are getting on pretty thin ice. The opinion of experts in the medical field when applied to economic questions would not be very binding on anyone. I should feel very much inclined not to be bound by them myself.

#### Recross-examination:

The AMA is composed of about 110,000 doctors. The opinion of 110,000 doctors is worth consideration, particularly as that opinion relates to the practice of the medical profession, and, in so far as the expert opinions of the



AMA are confined to questions of medicine, that opinion is of value, though it should not be taken seriously when it involves financial, economic and social readjustment questions. I do not agree with the ethics of the AMA which prohibits solicitation. I think that organized medicine has chucked the prohibition against a doctor advertising out the window and the rest of us need not concern ourselves about it. I do not agree with the principle of ethics which forbade physicians to consult with irregular practitioners, the implication being that members who are not members of the medical profession should not be in consultation with men who are. I have disagreed for 35 years with that prohibition and have never embraced it, though it has been in force for a very long time and is the subject of a very fierce controversy. The profession has been acting under the code of ethics of the AMA for many years and the origin of the document goes back for more than a century. The fundamentals of the code of ethics were laid down on the oath of Hippocrates. Individual professional man should not advertise his wares. When a group of individual doctors get together, it seems absolutely essential that there should be a satisfactory method by which the public may obtain the information concerning the group and the prohibition is likely to make it difficult or impossible for the public to obtain information on which they can come to a conclusion. The Mayo Clinic at times has come pretty close to advertising. The Mayo Clinic does not solicit patients. I should be unwilling to say that the Leahy Clinic in Boston does not solicit patients; it does not advertise. I do not know of a producer clinic that does advertise. The consumer clinic with which I am associated has tried not to advertise. I believe in the group method and want to see it tried. The group method practice of the Northern Pacific Railroad is successful; the Stanocola Group has been doing work and it is a consumer group. I do not know of the eight groups operating in Washington similar to the Northern Pacific Group and the Stanocola Group. Group Health I suppose wouldn't take a person as a subscriber if he appeared to be sick and would wait until he got well. The sick man is the one who needs medical care. They require their members not to overload themselves with an unreasonable number of sick people at the time of admission; they must have an average cross-section, and it is on this basis that they assume liability to do the job. The custom in other groups is

to admit patients, some groups require a physical examination; if the patient has certain disabilities those are made exceptions for which further payment must be made. They try to get a group of average people. There is no prohibition that sick people cannot belong to consumer groups, the only prohibition that I am aware of is that they cannot be looked after under this particular contribution. The consumer group cannot overload itself with too many sick people at average admission rate fee; if they do, they must charge additional fees or else leave the general doctor to take care of them. I have never studied the by-laws of Group Health and no one has ever presented those by-laws to me for advice.

The AMA should keep in close contact with the affairs and the administration of the hospitals throughout the country and that is in the public interest. I think that they should inspect hospitals in order to have an opinion which they may place at the service of the public as to the standards of the hospitals. If the AMA sought to establish a policy in the hospitals by persuasion and advice that the members of their staffs should be members of the AMA, I think they would be cutting pretty close to the line of minding somebody else's business. Boards of trustees of hospitals usually seek the advice of the medical profession as to who ought to be appointed to their medical staffs and it is not contrary to the public interest that the medical society of that particular locality should recommend its own members as staff members, or should recommend that the hospital try to select its membership from the medical society, so long as it remains in the field of recommendation. There is no harm in making such a recommendation and stating the reason for such advice. I discussed my answers since I testified last Friday with counsel for the prosecution, but I did not go over all my testimony in preparation for redirect. Any group organized to furnish medical care needs the advice of physicians on problems involved in medical care and the necessary equipment to give it, though they should consult other people on purchase details or business problems. The articles which I criticised in the Journal of the AMA began to appear in the middle twenties and went on for a number of years and pertained to compulsory health insurance in England and other countries and on group organizations and experimentation in the formation of groups. In making recommendations for the appoint-

ment of an applicant to a hospital staff, I would disregard the District Attorney's opinion that the doctor was connected with an organization engaged in the illegal practice of medicine, even though that opinion were supported by the responsible prosecuting officer of the particular city that the organization was engaged in illegal practices. All I am concerned with is whether the applicant has the qualifications of a physician. If a physician was qualified but didn't have a license, I would not recommend that qualified doctor to a hospital staff. If the question of the legality or illegality of the practice involved was pending before a court in that particular community, I would recommend that the hospital wait, out of respect to the court, for its decision before admitting the applicant to the hospital staff.

#### Further redirect examination:

The articles that I criticised in the AMA Journal were articles dealing with medical economics. These articles did not represent the individual advice and opinion of 110,000 doctors. If the AMA indicated to a hospital that it would be withdrawn from its approved list for intern and resident training unless it confined its staff to members of the AMA, this would be a grossly improper procedure which is wholly against the public interest. It seems to me that a medical association is not a proper judge of what is in the public interest and I wouldn't pay the slightest attention to a decision in that field.

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DR. BOWMAN C. CROWELL, a Witness for the United States.

#### Direct examination.

By Mr. Kelleher:

I am a doctor of medicine in the field of pathology and an associate director of the American College of Surgeons, an international organization of surgeons composed of 13,000 fellows. Fellowship is obtained on application and the presentation of proper credentials which require that the applicant has been graduated from a medical school for seven years and furnish references to surgeons who are acquainted with him and his work. If approved the applicant must then submit certain other qualifications with presen-

tation of records of surgical work that he has done. Since I am not a surgeon, I am not a fellow. The college was founded in 1912 by Dr. Franklin Martin, Dr. John B. Murphy, Dr. Edward Martin, and Dr. A. J. Ochsner, and several others. The college is for the purpose of improving the standard of the practice of surgery. Since 1918 one of its prime activities has been the standardization of hospitals, and it approves hospitals which meet its standard. The college does not require that before a hospital can be approved its staff have on it only members of the American College of Surgeons or of the AMA, as it is an international association and approves hospitals other than those in the United States. The college has two associate directors, an executive secretary of the board of regents, assistant directors, field representatives, and a general clerical staff, who are paid employees of the organization. The organization is governed by a board of regents elected by a board of governors, who are elected by the fellows of the college. The college has an executive committee empowered to act between meetings of the board. The fellows have one formal meeting a year; the board of governors meets annually; the board of regents at different intervals, sometimes twice, sometimes four or five times a year. At one time the college had a medical service board, appointed by the then president, Dr. Bentley Squier. The Medical Service Board was to study the provision of more adequate medical service to communities. The Medical Service Board was appointed on July 15, 1933, and was composed of Dr. Robert B. Greenough, Chairman; myself, as Secretary; Dr. G. Harvey Agnew; Dr. Charles A. Dukes; Dr. Franklin H. Martin; Dr. C. Jeff Miller; Dr. Eugene H. Pool; Dr. Arthur M. Shipley; Dr. J. Bentley Squier; and Dr. S. Marx White. Dr. Agnew, Dr. Martin and myself were not in private practice, though the other members of the committee were. The Medical Service Board conducted the study for which it was appointed and it was familiar with the findings of the Committee on the Cost of Medical Care. The Medical Service Board made a unanimous report to the board of regents of the college, though no formal vote was taken and the board of regents approved the report of the Medical Service Board.

Gov. Ex. 7 received in evidence and read to jury, as follows:

“Report of Medical Service Board.”

On July 15, 1933, on authorization of the Executive Committee of the Board of Regents of the American College of Surgeons, Dr. J. Bentley Squier, President, appointed a Medical Service Board to study the provision of more adequate medical service to the whole community. The Medical Service Board consists of Robert B. Greenough, Boston, Chairman; Bowman C. Crowell, Chicago, Secretary; G. Harvey Agnew, Toronto; Charles A. Dukes, Oakland; Franklin H. Martin, Chicago; C. Jeff Miller, New Orleans; Eugene H. Pool, New York; Arthur M. Shipley, Baltimore; J. Bentley Squier, New York; S. Marx White, Minneapolis.

On June 10, 1934, the Medical Service Board made a report to the Board of Regents of the College which was approved by that Board. The report is a statement of principles which should be observed in the development and conduct of prepayment plans for medical and hospital service, and does not propose any specific plan. The report follows:

'Report of Medical Service Board of the American College of Surgeons, June 10, 1934.

The Medical Service Board of the American College of Surgeons respectfully submits the following report to the Board of Regents.

1. The American College of Surgeons affirms its interest and its desire to cooperate with other agencies looking toward the provision of more adequate medical service to the whole community.

2. The College believes that it is the duty of the medical profession to assume leadership in this movement and to take control of all measures directed to this end.

3. Encouragement should be given to the trial of new methods of practice designed to meet these needs, and a careful evaluation of their success should be the duty of the medical profession before they are offered for general adoption. All such new and experimental methods of practice must be conducted strictly in accordance with the accepted code of ethics of the medical profession in order that the interests of the patient and of the community may be protected.



4. The College recognizes for immediate study four groups of the population for whom more adequate medical service should be made available, as follows:

- a. The indigent.
- b. The uneducated and credulous members of the community.
- c. Those who because of limited resources are unable, unaided, to meet the costs of serious illness and hospitalization.
- d. Those living in remote districts where adequate medical service is not obtainable.

5. The care of the indigent sick should be a direct obligation upon the community and (unless otherwise compensated by intangible benefits such as staff and teaching appointments, opportunity and experience) physicians fulfilling this public service should receive remuneration.

6. The College should work in cooperation with other medical groups in order to dispel the ignorance and credulity of the public, and to bring the people to a proper realization of the protective and curative resources of modern medicine.

7. The American College of Surgeons recognizes that the periodic prepayment plan providing for the costs of medical care of illness and injury of individuals and of families of moderate means offers a reasonable expectation of providing them with more effective methods of securing adequate medical service.

A number of different plans for the organization of such services have been proposed, although few have been in operation long enough to permit definite conclusions in regard to their success. It is to be desired that these experiments be continued. Conditions differ to such a degree in different parts of the country that a specific plan which is practicable in one place may require modification of details in other communities. The varying restrictions imposed by present insurance laws in different states further complicate the problem.

Periodic prepayment plans providing for the costs of medical service may be divided into two classes:

A. Payment for medical service.

B. Payment for hospitalization.

Plans for the payment of hospitalization alone (Class B) without provision for payment for medical service, may be considered the first project to be undertaken in the average community.

The American College of Surgeons believes that certain general principles can and should be established, the observance of which will tend to obviate known difficulties and dangers which may threaten the success of these special forms of medical service. These principles are as follows:

a. Periodic prepayment plans for medical service should be free from the intervention of commercial intermediary organizations operating for profit. After deduction of the clerical costs of operation of the fund and such accumulation of reserve as may be advisable in the interest of the contributors or may be legally imposed, the full amount paid by the contributors should be available for medical and hospital services.

b. In the interest of the patient, the organization of plans for the periodic payment of medical and hospital costs must be under the control of the medical profession. The medical profession must act in concert with the hospitals and such other allied services as may be involved in the individual project, together with a group of citizens representative of the whole community and of industry who are interested in the successful operation of the plan.

c. The principle of free choice of the physician and hospital by the patient must be assured to the end that the responsibility of the individual physician to the individual patient shall always be maintained. When hospitalization is required, this choice must of necessity be limited to the physicians and surgeons who hold appointments on the staffs of the hospitals participating in the plan or to those physicians and surgeons who are acceptable to the hospital. It is further recommended that only approved hospitals be admitted to participation in such a plan.

d. The compensation of the physician and of the hospital should be estimated with due regard to the resources available in the periodic payment fund and should be based upon the specific services rendered.

e. The organization and operation of any plan of this type must be free from any features not in accordance with the code of ethics of the medical profession which code has been established for the protection of the patient.

f. The medical organizations participating in such a plan must assume the responsibility for the quality of service rendered.

8. Periodic prepayment plans for the medical and hospital service should eliminate many of the conditions which have brought about the development of industrial contract practice. Until such plans have been more widely established certain general principles are here formulated with a view to the elimination of the commercial features of such forms of medical service.

a. The Minimum Standard for Industrial Medicine and Traumatic Surgery of the American College of Surgeons should be accepted.

b. Physicians and surgeons, qualified as in paragraph 2 of the above Minimum Standard may properly be employed on a full-time or a part-time basis by industrial organizations to provide medical and surgical service for their employees, as follows:

i. To provide emergency service and first aid in injury or disease, and to provide adequate medical or surgical care for industrial injuries and diseases. Medical and surgical care of the families of employees, and of employees themselves, except for emergency and industrial injuries and diseases, should be provided by the industrial physician only in remote districts where other adequate medical service is not available.

ii. To provide pre-employment and periodic physical examinations.

iii. To study the hazards of the particular industry and to cooperate with other agencies in effecting such measures as may be needed for the prevention of injury and disease.

iv. To keep accurate records such as may be required by local Workmen's Compensation laws, and so complete as to serve for scientific investigation of industrial hazards with a view to their further prevention. These records

are privileged communications, subject always to due process of law.

c. The sale of a contract by an industrial organization to an individual physician or group of physicians for medical and/or hospital service for its employees encourages commercial competition and is to be condemned.

d. Unethical practices in publicity, advertising, solicitation, and competition, either of a professional or of a financial nature, must be eliminated.

e. The accepted code of ethics of the medical profession, which is designed to protect the best interests of the patient, should apply to industrial medical service as to all other forms of medical practice. "

Referring to the first sentence of sub-paragraph (a) of paragraph 7 which reads: "Periodic prepayment plans for medical service should be free from the intervention of commercial intermediary organizations operating for profit;" it was not the intent of the Medical Service Board to recommend against the use of a non-profit organization to handle the administrative and clerical matters of the plan. That paragraph is limited to the intervention of commercial intermediary organizations operating for profit. That part of subsection (d) which says that the compensation of physicians should be based upon specific services rendered, means that the payment to the physician who participates in the plan should be proportionate to the services which he actually rendered and that he should not derive financial benefit merely on account of being on the staff of a hospital which happens to render this service. The board did not pass upon the question of a doctor accepting a salary for services in such a plan and did not make any statement of principle concerning the propriety of a doctor associating himself with prepayment plans on a salary basis, because the board was concerning itself with a statement of principles and not details of any specific plans. The question of whether a doctor should be paid on salary was a matter of detail depending upon the particular type of plan, in the board's opinion.

Paragraph 8 of the report in using the language "such forms of medical service" means periodic prepayment plans for medical and hospital services. Sub-paragraph (c)

of paragraph 8 of the report refers only to industrial contract practice and not to prepayment plans in general. Sub-paragraphs (a) to (e) under paragraph 8 were intended to apply to industrial medical practice and not to prepayment plans.

### Cross-examination.

By Mr. Leahy:

Industrial medical practice is medical practice provided by industries or industrial organizations to provide emergency service and first aid in injuries or diseases and has been quite prevalent and common. When the report was drafted, the committee did not have under consideration any particular group scheme but had the general subject of group plans under discussion. The college believes it is the duty of the medical profession to take control of all measures and that the plans that were drawn up or would be drawn up should be acceptable to the medical profession. It was felt that the medical profession were the arbitrators as to the success of the plans, that the plans must be conducted strictly in accordance with the accepted code of ethics of the medical profession, and by that it was generally intended that in the United States the code of ethics and principles of ethics of the AMA should apply. If the plans were conducted in accordance with the accepted code of ethics of the profession it was felt that that would safeguard the interest of the patient and the community. The term "credulous" as used in Section 4 of the report includes those members of the community who might be easily misled by advertising claims for services which would be rendered to them, that is, those who easily believe representations as to what they will get for what they will pay, and it takes into consideration the fact that the public as a whole is not competent to choose their own medical care and that there is that element in the community which must be protected against such representations. The same group is referred to in the sixth paragraph of the report. Paragraph 7 refers to such a periodic prepayment plan as is being conducted in accordance with the accepted code of ethics of the medical profession. The insurance laws of the states differ and arrangements for prepayment plans that are made must conform to the laws of the states in which



they are promulgated. Sub-paragraph (b) on page 2 is intended to obviate prepayment plans being put under the guidance of commercial organizations of laymen; in other words, it was the intent of the report that the medical profession should be the profession which controlled these plans. The report contemplates that only approved hospitals be admitted to a participation in such plans; as the college is made up of surgeons from the United States, Canada, Mexico, the South American countries, Cuba, Porto Rico, England, Scotland, Wales, India, China and others, it was intended to leave approval to the approving board or organization in each of these various countries. The only two approving bodies intended in the United States by the report are the American College of Surgeons and the AMA, and that in so far as the term "approve" is applied to hospitals the report meant only hospitals approved either by the college or by the AMA. Sub-paragraph (e) of the report refers to the code of ethics of the AMA. Sub-paragraph (f) of the report, according to my strictly personal interpretation, means that the medical profession should take charge of the quality of service rendered under the plans. It was not intended that any lay group, lay board of trustees or lay board of directors should assume the responsibility for the quality of service rendered. Paragraph (c) of Section 8 on page 3 of the second column of the report means to condemn a practice whereby one doctor engaged in industrial practice might underbid another in order to get the contract for the care of those in the industry and that such a practice is to be condemned. Sub-paragraph (d) provides unethical practices in publicity, advertising, solicitation and competition, either of a professional or of a financial nature, must be eliminated. The Board had permanently in mind observing the ethics of the AMA and that is why we put in paragraph E, which states:

"The accepted code of ethics of the medical profession, which is designed to protect the best interests of the patient, should apply to industrial medical service as to all other forms of medical practice."

The majority of the fellows of the college are members of the AMA. The college since 1918 has been inspecting and approving hospitals in order to elevate the general standard of the practice of surgery, improve care for pa-

tients, and improve conditions in the hospital. The inspection of a hospital depends upon the convenience or opportunity which particular inspectors may have to make the examination. While there is some communication with all hospitals each year, they are not usually inspected annually. On an inspection, the hospital is either approved or provisionally approved. Provisional approval means that in some respects they do not quite come up to our standards but they have given evidence that they are seeking to do so. The college publishes a report of approved hospitals each year. The list of hospitals identified as Def. Ex. Crowell, Cross Examination, No. 1, for identification, is a list of hospitals approved by American College of Surgeons, and similar lists are published each year. Membership in the college covers all parts of the country. In addition to the usual qualifications for membership, a very close investigation is made into the men who apply. In admitting to fellowship the ethical qualifications of a member enter into the question. In testifying that the college has no requirement that members of the staff of a hospital should be members of the college, that was because the college is an international organization, is restricted to surgeons, and upon the staff of any hospital there are others than surgeons, so the college could not require under its rules that the staffs of hospitals be composed only of surgeons. There is no requirement that surgeons on the staffs be members of the county associations. They should be licensed to practice in their communities and in good standing. The college does not attempt to recommend directly the personnel of any hospital. We expect the hospital to conform to our standards. We do not dictate personnel. We deal with the hospital as a whole rather than with the individual members of the staff.

#### Redirect examination:

To my knowledge no surgeon has been excluded or expelled from membership in the college for participation in a prepayment plan. The college has never threatened to withdraw approval of a hospital because the members of the staff were engaged in a prepayment plan. The college has never withdrawn approval of a hospital because of the participation of the staff of the hospital in a prepayment plan.

### Recross-examination:

The college would, however, threaten to withdraw approval if there were members upon the staff of a hospital engaged in unethical practices if that knowledge came to the college.

Mr. Kelleher then offered in evidence Gov. Ex. 8, portions of the proceedings of the House of Delegates of American Medical Association, June 11 to 15, 1934, appearing on page 42 under the heading "Resolution on the Apparent Attempt of the Board of Regents of the American College of Surgeons to Dominate and Control Medical Practice" and the portion of the proceedings appearing on page 9 under the heading "Report of the Judicial Council."

The defendants objected to this evidence, first, on the ground that the material offered is irrelevant and immaterial; second, it has nothing to do with the condemnation of the principles involved in the report; and third, as it merely expresses its condemnation of such tactics, and this apparent attempt of the board of regents of the American College of Surgeons to dominate and control the nature of medical practice. Objection overruled, exception allowed.

Gov. Ex. 8 received in evidence and read to jury as follows:

"Dr. George Edward Follansbee presented the following report:

A resolution introduced by Dr. Charles J. Whalen, Illinois, calls attention to a recent action by the Medical Service Board of the American College of Surgeons, approved by its board of regents, advocating publicizing a procedure for furnishing medical and hospital care for certain classes of the population. No consideration appears to have been given to policies or procedure previously adopted by the American Medical Association, of which the College of Surgeons are members. The American Medical Association is the one organization representing the entire body of physicians constituting the medical profession, and by virtue of that fact is the only organization qualified to speak for the varying interests and policies of the profession as a whole.

Recurring proposals concerning the entire practice of medicine from small sections of the profession, without due

regard to the policies of the entire profession, as represented by the American Medical Association, when presented to the public through other channels than the representative body are confusing to the public mind, are harmful to the profession, and give aid and assistance to those bodies and individuals who are attempting to revolutionize medical practice. The Judicial Council therefore recommends the adoption of the resolution as follows:

Whereas, the American Medical Association, including 100,000 members, is the only democratic body representing the organized profession of this country through delegates regularly elected through county and state medical societies; and

Whereas, other medical organizations and groups, representing selected groups of specialists who have from time to time issued pronouncements of policies in the field of medical economics and medical practice, which do not represent the views of organized medicine and which purport to guide the medical profession and the public in the administration of medical affairs; and

Whereas, the House of Delegates of the American Medical Association has repeatedly condemned the issuing of said announcements on policies which seriously embarrass the attempts of this organization to secure adequate care for the health of the American people and to protect the ideals of the medical profession; and

Whereas, the Board of Regents of the American College of Surgeons assembled in Chicago on June 10 promulgated a policy, including a prepayment plan for medical care, restricting so-called private hospitals to the members of the staffs of such hospitals, and to physicians acceptable to such staffs; and

Whereas, this action of the Board of Regents has been spread to the people of the United States through the public press on the opening day of the annual session of this House of Delegates:

Now, Therefore, Be it resolved that the House of Delegates and the American Medical Association expresses its condemnation of such practice and of this apparent attempt by the Board of Regents of the College of Surgeons to dominate and control the nature of medical care and practice; and be it further resolved that the House of Delegates requests the board of trustees of the American Medical



Association and the judicial council to ask the Board of Regents of the American College of Surgeons, who are themselves members of this American Medical Association, to explain the reason for their action and to justify the attempt of a small group within a specialistic organization to legislate for all the medical profession in this country, truly represented only by the American Medical Association.

The report of the judicial council was adopted on motion of Dr. C. E. Humiston, Illinois, seconded by Dr. Albert Soiland, Section of Radiology, and carried unanimously."

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RAYMOND R. ZIMMERMAN, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am at present and have been since August, 1939, employed by the Council of Personnel Administration, a division of the United States Civil Service Commission, which concerns itself with personnel problems of the Government. In 1936, 1937, and 1938 I was Director of Personnel of the Federal Home Loan Bank Board and concerned myself with personnel problems of the Home Owners Loan Corporation, and had been engaged in such personnel activities since March, 1934. The personnel department deals with problems of employments, wages, promotion, training, policy, labor policy, working conditions and employee health—the human problems of the organization. Prior to working for the Government I had charge of personnel matters for the Continental Oil Company in Oklahoma, as chief, personnel division. I have been continuously engaged in personnel problems since 1922 when I was employed by the Continental Oil Company. I studied personnel problems on the theoretical side for nineteen years and took special courses at Colorado College and at the Oklahoma A. & M. College, and for the last eight years at an institute at Princeton. I have spoken on the subject. I have been a member of the American Management Association for fourteen years. The Association is one of the principal management associations of the country, having a membership of three to four thousand organizations, to which both



private and Government organizations belong. I have been most active in the Personnel Division which is the principal division of the Association. I was on the program last year and dealt with the subject of training and developing personnel men.

Home Owners Loan Corporation is an independent instrumentality of the Federal Government created by an act of Congress in 1933 for the purpose of refinancing distressed home loans, with an original capital of \$200,000,000, and is self-sustaining financially and no funds are appropriated. In 1937 and 1938 its funds were taken entirely out of earnings. In 1937 its total average number of employees was between 15,000 and 16,000, though its staff is decreasing as it is a liquidating organization. Of those employees in 1937 there were 1,200 to 1,400 working here in Washington. The employees of Home Owners Loan Corporation were in 1936, 1937, and 1938 subject to rules and regulations governing federal employees, hours of work, rates of pay, hours of leave, and annual leave, and regulations of that sort, of the Civil Service Commission. Fifteen days sick leave per year is allowed an employee, though that leave is cumulative. A record of the losses of the Federal Home Loan Bank Board by reason of the annual sick leave was kept track of and the costs of sick leave were interpreted to the management under my direction. I have studied this problem in private industry and most private employers keep pretty accurate records of their costs. I am familiar with studies made by the American College of Surgeons and Westinghouse. In October, November, and December of 1936, the average number of employees in Washington was 1,534, that is, exclusive of 477 who were working in the field, leaving a net number of actual employees in Washington of 1,534; as to the year 1937 the total number on the payroll for these three months was 1,768 less 428 in the field, leaving a total of 1,340, and the average for the year 1937 was 1,405 actually employed in Washington. I had occasion to consider an employee medical health plan for the employees of the Home Owners Loan Corporation in Washington. I had familiarized myself with other plans of a similar type and inspected the Stanocola Clinic, observed its operation and sought the advice of the doctors on the staff of the Stanocola Plan in Louisiana. I discussed the matter fully with other doctors there as to size, costs, services, dues, budget, physical

equipment, and results. Early in 1936 I met a Mr. R. V. Rickord, an employee of the Twentieth Century Fund or the Good Will Fund, which funds are affiliated and philanthropic foundations financed by Mr. Filene, a Boston merchant. These funds and foundations published reports and studies from time to time, with which I am familiar. I received from Mr. Rickord a pamphlet entitled "How to Budget Health," which I studied. Mr. Rickord had been in personnel work with the Brooklyn-Edison Company. Mr. Rickord and I had discussions during the year 1936 and as a result of these talks with Mr. Rickord and my trip to Stanocola and my studies in the fall of 1936, I had some conversations with the officers of the Home Owners Loan Corporation, attending about four or five to six meetings. Mr. Rickord attended some of these meetings, probably all of them. As a result of these conferences it was determined to organize a group health plan—cooperative. Mr. John Fahey is Chairman of the Federal Home Loan Bank Board. Mr. Fahey was not approached concerning this plan until the matter had been presented to the board. Mr. Luke Keeley was president of the Employees Credit Union and an employee of the HOLC. The credit union is an employees' small loan bank. Mr. Keeley came to the discussions concerning group health. He and I drafted a report to the Home Owners Loan Board on the studies that had been discussed. The plan was an employee plan.

After Group Health Association, Inc., was incorporated, I participated in the efforts to obtain a medical director. In that connection we saw Surgeon General Reynolds of the Army on March 24, 1937, who brought to our attention the name of Colonel Glenn R. Jones, a medical officer. The next day we talked with Surgeon General Rossiter of the Navy. Colonel Jones seemed an ideal man for the position of medical director as he was trained at George Washington University, taught there and later went into the Army and had been the commanding officer of the base hospital at Camp Devens, Massachusetts. We offered Colonel Jones the medical directorship. I do not know whether Group Health offered Major General Ireland the medical directorship. In April or May of 1937 we interviewed the defendant Dr. Neill in the home of John Childress, an officer of the Home Owners Loan Corporation. Dr. Neill there stated that while he was interested, he couldn't make a decision about accepting the directorship until he knew the attitude

of the District Medical Society. Dr. Neill did not become the medical director. In May, 1937, Group Health employed Dr. Brown as medical director. Dr. Brown had been employed up to that time in the Veterans' Administration and was an older man and a doctor of medicine. He finally became medical director early in June of 1937 and was paid a salary. In the summer of 1937 his first task was to develop a floor plan for the clinic, establish the clinic, determine the equipment and try to assemble a medical staff. Dr. Brown obtained as a surgeon Dr. Raymond E. Selders, but I don't remember when Dr. Brown secured the other employees of the staff.

Early in 1937 I met the defendant Dr. Woodward of the AMA when he came to my office. Dr. Woodward introduced himself as a doctor from Chicago, as a lawyer, as an employee of the AMA, and as one who had previously lived in Washington, and stated he wanted to discuss a loan from the Home Owners Loan Corporation to the Group Health. I told Dr. Woodward that the Home Owners Loan Corporation couldn't make a loan of that character to Group Health or to anybody else and had not made a loan; and I gave him a copy of the Home Owners Loan Corporation Act. Dr. Woodward then asked for a copy of the contract between Home Owners Loan Corporation and Group Health. I did not give him a copy of the contract. I did not obtain a copy of the contract for him. I told him that the contract was in the office of the Secretary of the corporation and that I couldn't supply it. Dr. Woodward said the District Medical Society was deeply concerned about the whole matter and it was going to be a subject of discussion at the Atlantic City meeting of the AMA. He said that the whole plan was going to be given a going over at that meeting.

Q. Did he say anything about what would happen to Group Health Association after this meeting of the American Medical Association?

A. He predicted that it would be the end of it.

Mr. Leahy: I object to that.

Mr. Lewin: What is the matter with that? Isn't that the substance of what he said? He predicted that it would be the end of it. How can you get it any closer?

The Court: Are those his words, in substance; I don't expect him to give the exact words.

The Witness: Yes.

The Court: That may stand.

I attended a meeting of the Executive Committee of the District Medical Society in June, 1937, on the invitation of Mr. Penniman or Dr. Brown. Mr. Penniman was president of Group Health. Dr. Conklin was present but I don't remember the names of the other persons there. The meeting was called for the purpose of explaining to the group that Group Health was about to operate; the kind of plan it was and how it intended to function. The speakers were Mr. Penniman and Dr. Brown. The members of the Executive Committee asked questions and Mr. Penniman and Dr. Brown answered those questions. The questions concerned Group Health, its organization, operation, how its doctors were going to be paid, who was going to manage it, and where its money was coming from. About a month later the representatives of the District Medical Society came and met with the Board of Trustees of Group Health. This return visit had been arranged at the earlier conference. I remember that Dr. Macatee and Dr. Groover came as representatives of the District Medical Society, but I don't remember what other doctors attended. Stenographic notes of the meeting were kept. At that meeting Group Health and its operations were discussed.

Group Health opened its clinic the first of November, 1937. After that time I attended a meeting of Mr. Penniman, Mr. Kirkpatrick, and Mr. Loomis at the office of Dr. Neill concerning Group Health. As of November 1, 1937, 84 per cent of the members of Group Health earned \$4,000 or less; 58 per cent earned less than \$2,000 a year.

Cross-examination by Mr. Leahy:

In 1936 and 1937 I was director of personnel of the Home Owners Loan Corporation and concerned myself with personnel duties. As to an employee in my own division, which employees numbered about 100, I had the power to hire and fire but I did not have that authority outside of my division; it rested in the chairman of the board.

Q. Well, I asked the question, probably it wasn't technically put as a director of personnel would put it, but I asked the question: Who had the authority down there to hire and fire?

To this question an objection of the Government on the ground of immateriality was sustained and an exception to this ruling was noted by the defendants.

Before you continue, I think I should correct a former statement. I had authority to recommend the discharge of an employee in my division, but the power to employ and discharge lies in the board.

The exact date when Dr. Brown was employed as medical director was in my recollection on June 5 or the 7th. I did not employ Dr. Brown personally, and cannot testify as to any contract Dr. Brown had with Group Health. Dr. Brown was first approached on this matter in May or April. I cannot testify as to the time when Dr. Brown's appointment was under consideration. The meeting with Dr. Neill was before Dr. Brown was appointed. I was called to the conference concerning Group Health because I was Director of Personnel of Home Owners Loan Corporation and had an interest in its matters and the appointment of a medical director. Mr. Childress was the assistant to Mr. Fahey. I heard Dr. Neill say that before he would consider the medical directorship he would have to know the attitude of the District Medical Society. At the meeting of the Executive Committee of the District Medical Society, I am not sure who was present, the fact that the doctors of Group Health were to be paid a salary was discussed, the equipment for the clinic was discussed, its cost, and one of the doctors made some quick calculations and said that it couldn't be done, and I said it is being done. The discussion of the amount of dues brought on the calculation and the statement of the doctor that it could not be done. The doctors requested to see the contract (between Group Health and Home Owners Loan Corporation). This request was not granted. Dr. Brown stated that a group of this sort wasn't a charitable organization and it was only the members of the Association who would receive its benefits. I attended a luncheon at the Raleigh Hotel with Mr. Penniman and Dr. McGovern, at Mr. Penniman's request, but I don't remember why the luncheon was called or what was discussed. The meeting at the headquarters of the Home Owners Loan Corporation occurred about a month after the meeting of the Executive Committee of the society and was attended by the members of the board of Group Health, Dr. Brown, some members from the society and myself. Dr. Woodward called at my



office without an appointment and after he left I made a memorandum of the meeting. On that occasion Dr. Woodward requested a copy of the contract. I told Dr. Woodward he ought to go see our medical director, Dr. Brown, who would be at the AMA Convention at Atlantic City. It was very clear from the attitude of Dr. Woodward that he was not friendly nor did he intend to be helpful to us, and he told me that he was a lawyer representing the AMA, and I suspect I was a bit guarded in my conversation. The contract was discussed frankly and freely with people who could be helpful to Group Health, that is, people interested in the business arrangements. My reason for not supplying Dr. Woodward with a copy of the contract was that I didn't have it. In response to the question of whether I thought such action was cooperating with the District Medical Society, I say that the details of the contract were not half as essential as the principles of the plan, we knew what could be done and we knew what had been done and we went ahead and did it, and it is running. The contract was not produced at the meeting between the members of the District Medical Society and the representatives of Group Health at the Home Owners Loan Corporation. After the meeting with Dr. Neill at Mr. Childress' home, Mr. Penniman, Mr. Kirkpatrick, who was Vice-President of Group Health and in the Accounting Division of Home Owners Loan Corporation, Mr. Loomis, who was the assistant to John Fahey, Chairman of the Home Loan Bank Board, and I talked with Dr. Neill at his office. At that time Dr. Neill was in a critical frame of mind toward Group Health, being opposed to the principle of prepayment. The meeting at Mr. Childress' home was for the purpose of "looking for a medical director" and not for the purpose of obtaining Dr. Neill as a surgeon.

#### . Redirect examination:

Dr. Woodward told me that the whole subject of Group Health was to get a careful going over at the Atlantic City meeting of the AMA. The initial dues of Group Health were \$2.20 a month for individual members and \$3.30 a month for family members, and in return the members were to be given substantially complete medical service, including 21 days hospitalization and examination. The clinic was finally located on I Street between Thirteenth and

Fourteenth Streets. Group Health was acquiring medical equipment and apparatus during the summer under Dr. Brown.

It was stipulated that the by-laws of Group Health Association attached to Gov. Ex. 1 were all in evidence.

Recross-examination:

I did not tell Dr. Woodward that Dr. Brown would have a copy of the contract at the Atlantic City meeting.

ELSIE P. SADLER, a witness for the United States:

Direct examination.

By Mr. Kelleher:

I was employed as a clerk-stenographer with the Home Owners Loan Corporation on July 26, 1937, and was instructed to attend a meeting of the Board of Trustees of Group Health that evening by Mr. Penniman. I attended the meeting and took stenographic notes of what was said. I was assisted by Miss Roseannette Barrent. I took notes of everything and transcribed those notes and identify a transcript of the notes of the meeting of July 26, 1937, as Gov. Ex. 10.

Cross-examination.

By Mr. Leahy:

I was a secretary to Mr. Penniman's assistant at Home Owners Loan Corporation, doing stenographic work in his office. I remember I was at the meeting of July 26, 1937. Mr. Penniman instructed me to take the minutes of that meeting. I took the minutes of one other meeting after that. Miss Barrent at the same time was taking notes. Miss Barrent and I checked our notes together and made one transcript from our notes. I tried to get everything that was said at the meeting verbatim. The meeting lasted a couple of hours. I am capable of writing 120 words a minute as is Miss Barrent. We sat at the end of a long table and there were certain things said that we were not able to hear and that situation was indicated in the notes and the transcript by "and so forth, and so forth."

WILLIAM FREDERICK PENNIMAN, a witness for the United States:

Direct examination.

By Mr. Kelleher:

I am Deputy Governor of the Federal Home Loan Bank System. My home and headquarters are in Washington, D. C. In 1937 and 1938 I was the Assistant General Manager in charge of the Pacific area of the Home Owners Loan Corporation. I participated in some of the early meetings leading up to the formation of Group Health and officiated at some of those meetings. I familiarized myself with the Group Health Association plan and was one of the signers of its certificate of incorporation. I attended the first meeting of Group Health early in January, 1937, and in March, 1937, I was elected President of Group Health; Mr. R. T. Berry was elected Secretary-Treasurer and Mr. W. C. Kirkpatrick was elected Vice-President. The Surgeon General of the Army suggested Dr. Glenn E. Jones as Medical Director. I offered Dr. Jones the position of Medical Director but he did not accept. The conference with Dr. Neill at Mr. Childress' home was prior to the employment of Dr. Brown as Medical Director. At this conference Dr. Neill was told that Group Health was a group practice of medicine whereby employees would get full medical service at a monthly rate and that the doctors of Group Health were to be employed on a salary basis; that the Medical Director was to have charge of the staff and nurses on the medical side of Group Health; we went very thoroughly into this as we were anxious to have Dr. Neill as the Medical Director. Dr. Neill said he didn't see anything wrong with the setup but that his final decision would rest with the District Medical Society. Dr. Neill did not become Medical Director and the position was given to Dr. Brown early in June, 1937. I received a letter from Dr. Verbrycke, Gov. Ex. 11.

Gov. Ex. 11 was received in evidence and read to jury as follows:

"May 29, 1937.

Mr. W. F. Penniman, 1869 Wyoming Avenue, Washington, D. C.

DEAR MR. PENNIMAN:

Group Health Association, Inc., has been brought to the attention of the Medical Society of the District of Colum-

bia. The Medical Society has had a part in the formation of the present beneficent organizations such as Group Hospitalization, the Central Admitting Bureau, and the Physicians and Dentists Service Bureau, and the approval and help of the Society has been a vital factor in the success of these organizations.

May I ask, since your Association so deeply affects health problems in the city, if you will be good enough to submit a copy of your charter and by-laws, with a copy of the contract with your members?

Thanking you for your cooperation, I am,

Very truly yours, J. Russell Verbrycke, Chairman  
of Committee on Economics, Medical Society of  
the District of Columbia."

I telephoned Dr. Verbrycke about this letter and explained to him that the by-laws had been distributed to every member and that he would have no difficulty in getting a copy, that the charter was a public record and he could get that without trouble, but as to the contract I told him I was without authority to give him that. On June 24 I attended a meeting of the Executive Committee of the Medical Society with Dr. Brown and Mr. Zimmerman. I believe that Dr. Conklin presided and that the following doctors were present: Dr. J. Lawn Thompson, Dr. F. X. McGovern, Dr. William M. Sprigg, Dr. Verbrycke, Dr. R. Arthur Hooe, Dr. H. C. Macatee, Dr. Thomas E. Neill, Dr. Sterling Ruffin, and Dr. Groover, now deceased. The meeting was designed to acquaint the Medical Society with our purposes and what we were aiming to do. We wanted them to have full information concerning it; and the primary purpose was to solicit the aid of the Medical Society in helping us to get organized with the proper medical staff, et cetera. Dr. Brown, Mr. Zimmerman and I addressed the meeting and then the doctors asked some questions and we endeavored to answer them. About two weeks after the meeting Dr. Thompson visited me at my office.

In July, 1937, I received a letter from Dr. F. X. McGovern, Gov. Ex. 12.

Gov. Ex. No. 12 was received in evidence and read to jury as follows:

July 15, 1937.

Mr. W. F. Penniman, President, Group Health Association, Inc., Home Owners' Loan Corporation, Washington, D. C.

DEAR MR. PENNIMAN:

At the recent meeting held in the Medical Society Building, when you, Mr. Zimmerman and Dr. Brown, were present and discussed with us the plans and purposes of your organization, you were kind enough to say that your board of trustees would receive a committee from the Society for further discussion on the project.

The committee of the Society having this matter in charge finds itself unready to discuss the matter intelligently with you without further explanation. I am therefore directed to request, and I do respectfully ask, that you furnish me with copies of (a) your contract with Home Owners' Loan Corporation; (b) your adopted constitution and by-laws; (c) your form or forms of application; and (d) any form of contract or agreement setting forth the service to be rendered to members and their dependents.

Thanking you, I am,

Very truly yours, F. X. McGovern, M.D., Chairman,  
Subcommittee of Executive Committee."

After receiving this letter I called Dr. McGovern and asked him to have lunch with me. I had lunch with Dr. McGovern at the Raleigh Hotel. I took Mr. Zimmerman with me because he had been working on the thing, studying it, and we wanted to talk to Dr. McGovern in detail about Group Health. Mr. Zimmerman and I had made this study together. I felt that having him with me, we could have a round table discussion of our plan. With reference to Dr. McGovern's request for certain documents, I told him that the charter was a public record. I told him that we could not give him the contract.

On July 26 a meeting was had between representatives of the Medical Society and Group Health. Group Health was represented by the Board of Trustees, Dr. Brown, Mr. Zimmerman and myself. The meeting was held in the board room of the Federal Home Loan Bank. The Medical Society was represented by Dr. Groover, Dr. Verbrycke, Dr. Macatee, Dr. McGovern, and Dr. Conklin. The discussion was general and was a continuation of the previous discussion. Dr. Macatee took the lead and we went into considerable detail about this type of practice. Dr. Groover spoke of the type of this practice in other countries. I took



the impression that they would like to have us carry on with the association but let their doctors do the practicing. The Medical Society suggested that Group Health arrange for membership and membership fees, act as a kind of collection agency and when members were sick the local doctors would attend them. Mrs. Sadler and Miss Barrent took notes of the meeting at my direction.

Dr. Brown was to organize a staff, arrange for equipment and assist in locating space for the clinic.

I do not know the exact procedure followed by Dr. Brown in obtaining a staff. He, being a medical man, had his own way. He did write and contacted some doctors; investigated their qualifications very thoroughly and when he arrived at the conclusion that a person contacted did have the necessary qualifications the question was brought to the board with respect to the salary to be paid the individual. Dr. Brown recommended the salaries of the staff, which were accepted by the board. The first doctor he obtained was Dr. Raymond E. Selders. Dr. Brown selected Dr. Allan E. Lee, Dr. Scandiffio and Dr. Hulbert and the nurses. Dr. Lee is engaged in the general practice of medicine. Dr. Scandiffio is a pediatrician. The Group Health Clinic opened on November 1, 1937. On the previous evening the Board of Trustees sponsored a dinner at which Dr. Richard Cabot, a prominent physician from Boston and a brother of Dr. Hugh Cabot, spoke. Several other doctors were invited, including Dr. Neill, who wrote me through his secretary that he would be unable to attend. Dr. Neill was president of the Medical Society.

Gov. Ex. No. 13 was received in evidence and read to jury as follows:

"Dr. Thomas E. Neill,  
1824 Massachusetts Avenue,  
Washington, D. C.

October 26, 1937.

Mr. Wm. F. Penniman, Group Health Association, Inc.,  
1328 Eye Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

Doctor Neill will be unable to attend the dinner at the Mayflower Hotel on October 30, 1937, and has asked me to let you know.

Very truly yours, (Signed) Mary G. Lynch, Secretary to Doctor Neill."

Invitations were sent to the superintendents of all hospitals, but Colonel Randall of the Homeopathic Hospital was the only one who attended.

After the Clinic opened, Dr. Lee and Dr. Scandiffio tendered their resignations to the Medical Society.

Late in November, 1937, I met Dr. Neill at his office. There were also present Horace Russell, a member of the Board of Trustees of Group Health, Mr. Ivan Carson, Mr. R. T. Berry, Mr. W. D. Kirkpatrick and Mr. Zimmerman. I told Dr. Neill of the incident that had occurred at the Garfield Hospital which we thought was pretty terrible; that I had come to talk with him because he was the president of the District Medical Society and we felt very definitely that he should know about this matter. I told Dr. Neill that a patient, Mary Frances Stuart, had been carried to Garfield in a serious condition; that she was the laboratorian of Group Health and was found unconscious in her home. It was found that she needed an emergency operation. While she was waiting, a debate occurred in the corridor of Garfield as to whether or not any doctor could attend her and while she was in that condition a doctor made the statement that he couldn't attend her—he said that in a loud voice—if she was connected with Group Health. Dr. Lee, whose patient she was, found out that nothing had been done there, and he told the group that he was on the courtesy staff of Garfield and he entered her as his patient and she was operated on. I told Dr. Neill I thought the patient should have received better treatment because it was an emergency and time was of the essence. Dr. Neill gave us no encouragement and made the statement that the members of the Supreme Court and members of Congress, if put all in one room, couldn't competently select a doctor. I said that if that is true, how can a poor layman select the right kind of doctor. I told Dr. Neill that the doctor involved in the Mary Stuart case was Dr. Schoenfeld. I wrote a letter to Dr. Neill concerning this case and received a reply. The letter which I wrote is Gov. Ex. 13A and the reply I received is Gov. Ex. 14.

Gov. Ex. 13A was received in evidence and read to the jury as follows:

"Dr. Thomas E. Neill, President, Medical Society of the District of Columbia, 1824 Massachusetts Avenue, Washington, D. C.

DEAR DR. NEILL:

It was good of you to give so generously of your time to the representatives of the Group Health Association, when they called on you at your office on Saturday afternoon.

It has been my experience that when a group of men are gathered to discuss any subject, varying opinions as to what was said oftentimes result, notwithstanding the sincerity of all present. Wishing to avoid this in this instance, I have deemed it advisable to confirm in substance the highlights of our discussion as understood by us, as follows:

1. That the hospitals are maintained for the patient and not for the doctor, therefore, no hospital is justified in refusing admission to any patient in need of hospital care, regardless of race, color or creed, or membership in any association.

2. That there are at present some 400 doctors, licensed to practice in the District of Columbia, who are not members of the Medical Society of the District of Columbia, some of whom are on the courtesy staff of local hospitals. This confirms our opinion that membership in the District Medical Society by a licensed physician is not a condition precedent to being accepted and placed on the courtesy list of the local hospitals.

3. That consideration of the applications of duly licensed physicians applying to any of the local hospitals for courtesy privileges is based upon merit and competence of the physician making the application.

4. That to falsely charge a physician with incompetence subjects the accuser or accusers to suit for libel. This statement was made in connection with your reference to one of our doctors, but whose name you did not wish to disclose.

Dr. Raymond E. Selders' application for courtesy privileges has been submitted to several of the local hospitals.

A careful and thorough investigation of Dr. Selders' qualifications was made before his acceptance as a Member

of the Medical Staff of the Group Health Association. This included a careful review of his education, and his years of experience. We have checked his record from Texas to Massachusetts and have unqualified statements from physicians with whom he has worked, and in whose integrity we have implicit confidence.

Both as President of the Medical Society of the District of Columbia and a prominent physician of long standing in this community, it is, we think very proper that you should be thoroughly conversant with every activity, the purpose of which is to give medical care, to the end that the highest standard of ethics of the medical profession may be maintained. For this reason, we are delighted to have had this talk with you.

I also wish to confirm our understanding that what was said by you to us was in confidence and in nowise intended for purposes of publication.

Sincerely yours, (Signed) William F. Penniman,  
President."

Gov. Ex. 14 was received in evidence and read to jury as follows:

"The Medical Society of the District of Columbia,  
Washington

November 24, 1937.

Mr. Wm. F. Penniman, President, Group Health Association Inc., 1328 I Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

Thank you for your letter of November 22nd.

I was very glad to have the opportunity of putting a few facts before the group of men that came to my office with you on Saturday. I think a full understanding of what we must adhere to by you and your committee will save a great deal of unpleasantness in the future.

I shall be very glad to discuss in person with you any point, under the same conditions.

I wish to thank you and through you the rest of the men present for the very frank way they expressed their opinions.

With kind regards,

Very sincerely yours, (Signed) Thomas E. Neill."

Q. Mr. Penniman, I would like to clear up one thing about the conference with Dr. Neill. Did you tell Dr. Neill how Dr. Schoenfeld happened to get into the Mary Frances Stuart case?

Mr. Leahy: Would that be material, based wholly on hearsay? Anything he said to Dr. Neill wouldn't be admissible.

Mr. Kelleher: He went into everything this morning.

The Court: It is just a part of a conversation that is already in.

By Mr. Kelleher:

Q. Do you understand my question?

A. Yes. I told Dr. Neill Dr. Schoenfeld was the surgeon who was going to perform the operation and told him Dr. Schoenfeld was ready, but he was the one who made the statement he couldn't do it if she was connected with Group Health Association.

Q. Did you tell him who had requested Dr. Schoenfeld to operate?

A. Yes, I told him that Dr. Lee was a member of Garfield Hospital, was on the courtesy staff, and that he and the medical director had arranged for it.

Q. Did you tell Dr. Neill why Dr. Lee did not himself perform the operation?

A. Well, I presume I did, because I could very easily have said in the course of this general conversation that Dr. Lee was not a surgeon.

Q. Why didn't Dr. Selders perform the operation?

A. Dr. Selders wasn't—

The Court: The question is what the conversation was.

The Witness: I told him that Dr. Selders had not been admitted to the courtesy staff of the hospital and had gotten Dr. Schoenfeld to do it.

By Mr. Kelleher:

Q. Did you explain to Dr. Neill who Dr. Schoenfeld was?

A. Yes.

Q. What did you tell him?

A. I told him he was a member of the courtesy staff and was a member of the District Medical Society and that he had called him to perform this operation.



After Dr. Lee and Dr. Scandiffio submitted their resignations to the Medical Society they later withdrew them. I attended a hearing of the Executive Committee of the Medical Society on December 6, 1937. That was the hearing that had been given Dr. Scandiffio and Dr. Lee on charges preferred against them by the C. C. and I. M. Committee of the Medical Society, and they were given the right to this hearing before being expelled from the society. Dr. Hiram Reed served as chairman; Dr. Hooe, Dr. Neill, Dr. McGovern, Dr. Verbrycke, Dr. Macatee, Dr. Conklin and Dr. Sprigg were in attendance as well as three attorneys, Mr. Fenning, Mr. Hoover, and Mr. Leahy; Dr. Scandiffio and Dr. Lee attended, accompanied by Mr. Zimmerman, Dr. Brown, and the following attorneys: Mr. Luke Keeley, Mr. Horace Russell, Mr. E. K. Newman, and Mr. York. I also attended the adjourned session of this hearing on December 10.

Thereupon, the following questions and answers occurred over the objections and exceptions of the defendants that they were inadmissible because immaterial, irrelevant and hearsay:

Q. Mr. Penniman, did you see Dr. Allan E. Lee on the afternoon of Friday, December 10?

A. Yes.

Q. Did Dr. Allan E. Lee make a telephone call in your office?

A. Yes.

Q. Did you hear him make that call?

A. I did.

Q. Whom did he call?

A. Dr. Hooe.

Q. Is that Dr. R. Arthur Hooe?

A. That is correct.

Q. Did you attend a meeting of the Executive Committee of the District Medical Society that evening?

A. I did.

Q. When you came into the building where the meeting was being held, did you see Dr. Lee talking with anybody?

A. I saw Dr. Lee in the corridor.

Q. With whom was he talking?

A. Dr. Hooe.

Q. Did you watch Dr. Lee talking with Dr. Hooe?

A. Well, I observed it. I made no attempt to listen to what was said. I observed that the two were talking.

Q. You didn't hear the conversation?

A. No, I did not.

Q. What occurred after the conversation between Dr. Lee and Dr. Hooe?

A. Dr. Hooe went back in some little office right off the corridor, and shortly thereafter asked Dr. Lee to come to the room.

Q. Did you see Dr. Hooe come back out of the room?

A. Yes.

Q. Did he beckon Dr. Lee to come in?

A. Told Dr. Lee to come in, and he followed.

Q. After you saw Dr. Lee go into the room with Dr. Hooe what occurred?

A. He shut the door.

Q. Did the Executive Committee meeting commence after that?

A. Yes.

Q. What occurred at the start of the meeting?

A. Dr. Hooe, as I recall it, made the statement to the chairman of the Executive Committee that Dr. Allan E. Lee, having now tendered his resignation to Group Health Association, the C. C. and I. M. Committee recommended withdrawal of the charges, and I think it was put to a vote of the Executive Committee and they voted to withdraw the charges and reinstate Dr. Lee.

At the second meeting Dr. Scandiffio testified. I testified at the third meeting held the week following the second meeting. Dr. Brown also testified.

I wrote and mailed communications to the Washington hospitals concerning staff privileges for the medical staff of GHA and I received replies to these letters. These letters are marked Gov. Exs. 15-29, inclusive.

Gov. Exs. 15 and 16 were admitted in evidence subject to proof of the conspiracy.

Gov. Ex. 15 was read to the jury as follows:

"November 8, 1937.

Col. Joseph Randall, President, Board of Trustees, Homeopathic Hospital, 3146—19th Street N. W., Washington, D. C.

DEAR COL. RANDALL:

For your information, I am attaching hereto a copy of a letter addressed to the Homeopathic Hospital requesting

permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 16 was read to the jury as follows:

"National Homeopathic Hospital,

Washington, D. C.

November 9, 1937.

Mr. William F. Penniman, Group Health Association, Inc.,  
1328 Eye Street N. W., Washington, D. C.

MY DEAR MR. PENNIMAN:

At a Board of Trustees Meeting held on November 4, 1937, it was voted that until the Group Health Association, Inc. was approved by the Medical Society of the District of Columbia, the National Homeopathic Hospital could not make any contract or enter into any agreement with it.

Very truly yours, (Signed) J. B. Gregg Custis, M. D.,  
Executive Officer, Board of Trustees."

Gov. Exs. 17-29, inclusive, were offered in evidence. Defendants objected on the ground that no conspiracy had been shown and that they were immaterial, incompetent and irrelevant. The court reserved ruling on the admissibility. The Government reserved the right to recall Mr. Penniman.

Cross-examination.

By Mr. Leahy:

I was President of Group Health in 1937 and in 1938 was a member of the Board of Trustees, which consisted of eleven members. At that time in HOLC I held the position of Assistant General Manager in charge of the Pacific Coast Area. Mr. Zimmerman had a great deal to do with the

formation of Group Health and I kept in constant touch with reference to GHA matters; we worked together pretty closely.

The first time I saw any member of the District Medical Society concerning Group Health was when I visited at the Society's headquarters sometime after the receipt of Gov. Ex. 11. As President of Group Health I had not attempted officially or unofficially before the receipt of Gov. Ex. 11 to contact the Medical Society. In April I had interviewed Dr. Neill at Mr. Childress' home, accompanied by Mr. Horace Russell, General Counsel of HOLC, and Mr. Zimmerman. It was at Mr. Childress' suggestion that Dr. Neill met us at his home.

About 900 copies of the by laws of Group Health had been distributed to the membership shortly after February 24, 1937. I don't recall whether a copy of the by-laws was left with Dr. Neill. I don't recall that Dr. Neill asked for a copy.

After receiving Gov. Ex. 11 I called Dr. Verbrycke and talked to him; I thought that in a discussion with him over the telephone I could give him so much more information concerning the plans of operation than I could in a letter and he wanted certain things and I wanted to discuss those things with him, which I did in a telephone conversation. I knew nothing about the Central Admitting Bureau or the Physicians and Dentists' Service Bureau mentioned in the letter. Group Health never submitted a copy of its charter to the Medical Society as it was a matter of public record. I did not have a copy of the charter but I had copies of the by-laws. I could have mailed him a copy. I told Dr. Verbrycke that a number of copies of the by-laws had been distributed and that he would have no difficulty obtaining one. As a matter of fact we had already heard that a number of copies were in the hands of doctors. When the meeting was had at the Medical Society, I do not remember that any copy of the by-laws was produced. No list of the members of Group Health was furnished Dr. McGovern. No copy of the contract between Group Health and HOLC was ever supplied the Medical Society. No copy of the forms of application for membership was supplied the Medical Society.

At the time of the meeting with Dr. Neill at Mr. Childress' house we would have been delighted to hire Dr. Neill upon Mr. Childress' recommendation and his reputation which was excellent. Dr. Neill did say at this occasion that

he had just been elected president of the Medical Society to take office on July 1. Dr. Neill did not say anything which indicated whether or not he would like the position. The only indication, as I can recall, was that he did not see anything particularly harmful in this organization set-up that we had described. He mentioned something of the type of service being given by the Potomac Electric Company or the Telephone Company. But before he left he did indicate that whatever he did, his final action would have to be upon the decision of the District Medical Society. When I outlined the plan it did convey the information that it was a prepayment service. There was no indication during the evening's conversation that Dr. Neill objected to the prepayment notion. Dr. Neill advised us that he was engaged in some form of contract practice with one or two organizations in the District of Columbia. To the best of my recollection there was no question at that time brought up about the legality of Group Health. I cannot recall that Dr. Neill said anything with regard to the ethical side of it. The remark that he made as he was leaving was he had to leave because of some engagement and that his further action would have to depend upon the attitude of the Medical Society. I don't remember his saying anything about legality or ethics of it. He did say that he saw nothing wrong with it, and that there were other practices such as he was interested in. We did not get in touch with him again, as we were waiting for a call from him. This visit is fixed in my mind as sometime in the spring, because we were anxious to get a medical director, to get started. We had already then taken applications for members of the Association. The formation centered around the getting of a competent medical director to start the staff and fix the clinic. We had not at that time obtained a medical director. We were looking for a medical director. We would not have selected a surgeon.

When we met with the Executive Committee of the medical society after the receipt of Gov. Ex. 11 this was the first time that anybody representing Group Health had seen an official group of the Medical Society. The general discussion was concerning just what it intended to do and how it could do what it intended. I gave the opening statement and tried to give as broad and clear an outline of the purposes of the organization as possible, expressing the desire to have the doctors in the Medical Society have the fullest



information about this. That was the purpose of coming over, to solicit their cooperation to the end that we might have an organization that would be above reproach. There was no objection to giving them the by-laws or a copy of the charter, if they did not already have it and if it were not obtainable. But so far as the contract that existed between Group Health and the Federal Home Loan Bank Board was concerned, I made it pretty clear that that was something we had no authority to give. That had to come from the Board itself. I do not recall that I advised the Board that the Medical Society would like to see a copy of the contract. We had gotten reports from several of the members that they had given copies of the by-laws to the local doctors. I could not say that any single member of the Executive Committee that night had ever had a copy of the by-laws of Group Health. Considerable discussion occurred at the meeting with the Society concerning the possibility of Group Health economically succeeding. Dr. Groover made some calculations of the dues of \$2.20 per member and \$3.30 per family per month and stated that the organization could not give at such a price medical service of good quality. But it has been done and it is now operating.

Q. It has not been done on dues, has it?

A. Yes.

Q. Has it, Mr. Penniman?

A. Except for the purchase of equipment.

Q. How big an exception was that?

A. \$40,000.

Q. How big an exception did you make otherwise?

A. How big an exception other than dues?

Q. Yes.

A. None.

Q. Any contributions from any other association?

A. From other associations?

Q. Yes.

A. No; not that I know of.

Q. None from the Good Will Fund?

A. No.

Q. None from any other association?

A. None that I know of.

Q. Who paid the salary of the administrator from August, 1938?

A. That was beyond my time. I don't know what the contract was.

Q. You were still president, you said, until September or October, 1937?

A. Yes.

Q. I mean, until 1938.

A. Oh, no.

Q. Were you a member in 1938?

A. Yes.

Q. Were you on the board of trustees in 1938?

A. Yes.

Q. But you do not know who paid the rent on the office occupied by the administrator for Group Health?

A. After I assumed this new position—

Q. Just answer that question, please.

A. No; I don't know what the contract was.

Q. You knew you were not paying his salary.

A. I didn't pay any of the salaries.

Q. I mean, Group Health.

A. I don't know what arrangements were made. I didn't see the contract.

Q. Do you know Mr. Taylor?

A. Oh, very well.

Q. See if I understand correctly. You did know that he was the administrator of GHIA?

A. Yes.

Q. You did know he had a separate office?

A. Yes.

Q. But you do not know who paid his salary or who paid the rent?

A. I would not go so far as to say that. I would not know who paid his salary. I heard that some arrangement had been made, but the details of it I could not tell you about.

Q. I am not asking for details, but just a broad answer. Who was it you heard paid his salary?

A. I don't believe I can answer, except from hearsay.

Between this meeting and the subsequent meeting had at the Home Owners Bank Board there was a great deal of agitation about Group Health and its ability to succeed and its ability to get competent doctors and its ability to do a good many things. Stenographic notes were kept of both meetings. I asked for a copy of the notes of the Medical Society and I think I have seen them. After the notes of the meeting in the board room of the Home Owners Loan Corporation were transcribed, I don't think I ever authorized my secretary, Mrs. Sadler, to furnish the Medical Society with

a copy of those notes. At the luncheon with Dr. McGovern I was accompanied by Mr. Zimmerman and I was asked by Dr. McGovern for a copy of the by-laws, a copy of the contract between the members and the Group Health, and a copy of the contract under which Group Health was to obtain funds. I told Dr. McGovern that I could not give him a copy of the contract because I did not have the authority to give it; that, if he wanted the charter, it was a matter of public record and that copies of the by-laws were generously distributed and he would have no difficulty in getting one. Dr. McGovern left the luncheon without getting the information he asked for, but with an explanation.

I went to Dr. Neill's office in November to discuss the case of a young lady who had been admitted to Garfield Hospital and operated on by Dr. Schoenfeld. Dr. Neill stated that he did not know what had occurred. The next day after the meeting I wrote a letter of what occurred there, to Dr. Neill, giving the highlights. I called Dr. Neill on the telephone and arranged the appointment. Dr. Neill stated that it was to be off the record and not official and not to be published. It was understood that the meeting was to be unofficial with no publicity whatsoever. I made a record of what transpired, placed it in a letter and sent that letter to Dr. Neill, as President of the District Medical Society but to his office and marked personal. We went to see Dr. Neill in his capacity as President of the Medical Society.

I learned the information which I gave Dr. Neill from Dr. Brown and Dr. Allan E. Lee. Dr. Lee was on the staff of Group Health. He had courtesy privileges at Garfield Hospital. I told Dr. Neill that Dr. Lee took this lady to the hospital. I told Dr. Neill that Dr. Schoenfeld said that if she is connected with Group Health, "I can't have anything to do with her." Dr. Lee was present and heard this. Dr. Lee had courtesy privileges but he is not a surgeon. Arrangements had been made for Dr. Schoenfeld to perform the operation. She was found unconscious in the morning about 7:30 A. M. on the floor of her bathroom and taken to the hospital. After these doctors said that they could not touch her if she was connected with Group Health, Dr. Lee said, "I am on the courtesy staff and I am bringing this patient in as my patient." Then the young lady was operated on that morning. We reported to Dr. Neill because she was in a critical condition and the doctors were

arguing that they could not go up if she was a member of Group Health. I never talked to Dr. Schoenfeld personally about the matter.

With reference to the resignations of Dr. Lee and Dr. Scandiffio from the Society, I had not been informed that the Society had a provision in its constitution concerning approval of contracts which any member might enter into with any group or industrial organization. We had gotten from various sources that these doctors could not be approved by the Society until it had approved Group Health. We knew that where a doctor who was a member of the Society was to render service under a contract that that contract needed to be approved by the Society. Group Health never submitted any contract with its physicians to the Medical Society for approval, but I think Drs. Lee and Scandiffio did. I think a contract was drawn up but I don't know whether Dr. Lee and Dr. Scandiffio signed such a contract. No doctor could work and receive a salary from Group Health until the Board of Trustees authorized that employment. I knew that Dr. Brown was negotiating with both Drs. Scandiffio and Lee before either of these doctors submitted their resignations to the Society. As President of Group Health, I did not request the Medical Society to approve the contracts of Drs. Scandiffio and Lee. I did submit requests for hospital privileges to the hospitals. At the meeting Dr. Macatee said that the Medical Society was in sympathy with the objective of spreading the cost of illness for individuals over a large group so that the disasters that come to family budgets might be avoided by group protection, but there was a disagreement as to the method of obtaining this objective. The main objection of the Medical Society was the fact that these doctors were working on a contract, those that were getting a salary for their services. The doctors expressed themselves as willing to go along with Group Health on some basis whereby the membership could be in the organization with the local doctors taking care of the patients as distinguished from salaried doctors on the staff of Group Health. I remember Dr. Macatee explaining that the Society found itself in an embarrassing situation growing out of the difficulty of finding acceptable contracts by which medical men might lend themselves to plans like Group Health without incurring certain infractions of the principles of medical ethics by which the doctors are bound.

Dr. Macatee told Group Health that in examining its charter the doctors were quite uncertain about the plan and would like to have information of whether or not the corporation was legal, because in many of the states of the Union the courts have found that a corporation cannot practice medicine for the reason that a corporation cannot be licensed to practice medicine, although they realize that the question had not been decided in the District of Columbia. As President of Group Health, I did not give the District Society any information concerning the legality of Group Health as there wasn't any question in our minds about it. We went into details of the operations of Stanocola and Civic Medical in Chicago and Ross-Loos in Los Angeles. Dr. Macatee informed Group Health that the constitution of the Medical Society made it mandatory upon all members that a contract to render medical service must be approved by the Medical Society in order to ascertain that its terms and objects were in accord with the principles of medical ethics. Dr. Macatee told us that the principles of medical ethics which caused him some doubt concerning Group Health dealt with the solicitation of patients directly or indirectly, ~~underbidding to secure a contract~~, when the compensation is inadequate to insure good medical service, when there is interference with reasonable competition in the community, when free choice of a physician is prevented, when conditions of employment make it impossible to render adequate service to the patient, when the contract, because of any of its provisions or practices, is contrary to sound public policy.

Q. Now, did he further bring to your attention: "The other thing that has occurred to us that seventh item in the criteria for the ethical character of a contract with a corporation, and that has to do with whether it is consistent with sound public policy. We conceive ourselves to be responsible in a measure for the welfare of the citizens of the jurisdiction in which we practice and we wonder whether the plan which has been so carefully worked out for your organization, whether it will actually perform for the members who join it, just the function that you design for it. We know in our contacts a good deal about human nature; we know how people when they have trivial illnesses most any doctor who is licensed and who can be found on the corner will do, but we also know that when serious illness, when complicated and difficult cases arise, and those are the



cases which strike heavily upon the budgets of families, that nothing but the best will do."

Do you remember a discussion on that?

A. Very well.

Then Dr. Macatee asked if an epidemic broke out how Group Health would take care of its members and whether surplus funds were available for that situation. Dr. Macatee was told that in that situation Group Health would solicit the aid of the members of the Medical Society. At the same meeting Dr. Groover talked, saying that wherever clinics of this type had been organized in foreign countries, in Cuba, Germany and elsewhere, there had been a depreciation in medical services and things of that kind, I remember.

Q. Do you remember Dr. Groover saying this: "In the first place, before I say anything, let me make it plain that I have no personal interest in what this group does for the very simple reason that I have practiced medicine now some 40 (30) years and my days of practice are nearing an end in five or six years, so it doesn't make any difference to me personally what you do or what you don't do."

To some extent, that is true of some of my colleagues who are with me. I think when we boil the whole thing down we will find that the fundamental thing that concerns the medical profession and actuates it to look askance at such development as this, is the consideration as to the effect it may have on the quality of medical care, and I believe that the medical profession as a whole would be perfectly willing to waive almost any other consideration if they could be convinced that it would not tend to the deterioration of the quality of medical care. The medical profession generally believes that. Now, they may be wrong, but they are overwhelmingly of that opinion. It is difficult to convince a layman of that, I know, and perhaps to do so would be an almost futile undertaking. I will call your attention to just one thing that will give you something to think about: When I graduated in medicine in 1898, Germany was a leader in medical science, perhaps next would come France, next would come England, and somewhere way down at the bottom of the list, came the United States. We were backward. Well, now, it is at least significant that at about that time these social schemes began to be introduced into Germany first under Bismarck as a purely political movement, and later on they have spread. Now what

has happened. This is not proof, I know, but it is suggestive. Is Germany any longer the leader in medical science? No, it is not. Leadership has passed from Europe where these various social schemes have been tried out, to the good old U. S. A. Now that at least is significant and I think that while we must be coming up the scale, they have to some extent gone down. America no longer goes to Germany for its post graduate education. As a matter of fact, many Europeans are now coming to the United States for training, and I mention that one thing to indicate that the thing that concerns the doctor is how these different things are going to affect the quality of medical care in the United States and if we don't have a broad enough vision to sustain and to constantly increase the quality of medical care, your economic considerations are worse than failures and I think you should give careful consideration as to this for that is the thing in the last analysis that concerns the medical profession, as to how and what effect it is going to have on the quality of medical care. Doctors who have studied it feel that it will be bad. Maybe they are wrong, but there is certainly sufficient evidence to justify that opinion. I think that is about all I have to say."

Q. Do you remember that statement?

A. Yes, sir.

Cross-examination suspended.

Government counsel objected to this method of cross-examination stating that the document from which defense counsel was reading, marked Gov. Ex. 10, had been offered in evidence by the Government and that the court had taken it under advisement.

Gov. Ex. 10 was received in evidence and read to jury as follows:

"July 26, 1937, 8 p. m.

Mr. Penniman: Dr. McGovern tells me his committee is complete. For the benefit of the Members of our Board, let me repeat again as I did in a report that I submitted sometime ago. The committee was invited to appear before a group of the members of the Medical Society that they might learn more about the aims and objectives of this effort of ours in the Group Hospitalization. We met with the committee that was selected and a good many questions were asked and a good many answers were given. We hope

we gave the answers they wanted. We endeavored to do so. We had nothing to withhold; we put all the cards on the table and endeavored to answer every question that was asked upon which we felt they would receive any benefit. At the conclusion of this meeting and I believe, Dr. Conklin, you asked the question if our Board of Trustees would be willing to receive a committee from the Medical Society who would come over with the end in view, the idea in mind, of presenting to our Board some plan wherein the District Medical Society could cooperate or could be helpful to this group. Dr. McGovern, I believe is the Chairman of this committee. Dr. Conklin is the Secretary of the Society and of the Committee, I take it, and the purpose of this meeting is to hear these gentlemen in any plan they wish to present to this body wherein it can be worked out or some thought advanced wherein the Medical Society can be helpful to us.

Dr. McGovern: In reply to Mr. Penniman, I would like to state that we appreciate the opportunity of being here with you, and we would have been here sooner except that we were possibly lacking in some information that we thought we might have. I'm going to turn the chairmanship of my committee over to Dr. Macatee for the evening.

Dr. Macatee: Mr. Penniman, ladies and gentlemen, I should like at the outset to express our appreciation of the attendance of Mr. Penniman and his associate gentlemen of this organization at the meeting of the Medical Society sometime ago, and I would particularly like to express our appreciation of this full meeting of your Board of Trustees and others interested in the organization. In Mr. Penniman's introductory remarks this evening, he stated that we had asked for this conference with the idea that we might present some plan by which the Medical Society might be helpful to your organization. I think I may say for the Medical Society that we are in sympathy with the proposition of spreading the costs of illness to individuals over a large group so that the disasters that come to family budgets may be avoided by that group protection. We feel that if some method could be devised by which there could be accomplished economically, and I use the word 'economically' in the sense of not only doing it within the means of people of moderate income, but also from the view of keeping the project solvent, that if some such method could be worked out, it would have tremendous social value.

Now, Mr. Penniman's remarks, however, leave us somewhat in an embarrassing situation, for the reason that we are not yet in a position to know how we may cooperate helpfully to the organization. And those reasons are bound up in a number of considerations which are very clear and familiar to us as medical men, growing out of the difficulty of finding acceptable contracts by which medical men may lend themselves to plans of this sort, without incurring certain infractions of the principles of medical ethics by which we are bound. In looking over your Articles of Incorporation I find that among the objects and purposes for which this Corporation is formed are the following:

To provide without profit to the corporation for services of physicians and other medical attention of any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and certain other objects which are enumerated there. The first thing that occurs to us is this: that yours is a corporation which is intended to provide for the service of physicians and other medical attention, of any and all kinds of medical, surgical and hospital treatment to the members.

One of the things that we are quite uncertain about and we should like to have information about, if you have it, is that in many of the states of the Union the courts have found that a corporation cannot practice medicine for the reason that a corporation cannot be licensed to practice medicine and for that reason, although we realize that in the District of Columbia that question has not arisen hitherto and there have been no judicial decisions upon it, such question might arise and the Medical Society would therefore be very uncertain what it could advise its members to do with respect to cooperation with such an organization. So far as the District of Columbia, therefore, on that ground at any rate, your organization is, in the words of Secretary Perkins, 'Its legality has not yet been determined.'

Now, then, one of the other, or at least not one of the others, but the principal difficulty that we are facing at the present time also is the knowledge that certain members of the Medical Society have already been approached with a view to serving your organization in a medical capacity. There is in the Constitution of the Medical Society of the District of Columbia a provision which is mandatory upon

all of the members of the Medical Society that contract to render medical service must be approved by the appropriate committee of the Medical Society, taking into consideration the objects of the contract, the terms of the contract, and whether those terms and objects are in accord with the principles of medical ethics. There is another provision which prohibits members of the Medical Society from lending their services to any corporation, group or individual under a contract unless the practices and purposes of the organization have been approved by the Medical Society, after due consideration of all of these objects, purposes, methods and the terms of the contract. Those things have by experience been found necessary in the orderly conduct of the affairs of the medical profession and inasmuch as the Medical Society of the District of Columbia is a component unit of the American Medical Association, in the terms of its Constitution and By-laws the members of the Medical Society are bound by the principles of ethics promulgated by the American Medical Association. Now, the principles of medical ethics lay down certain rules with respect to contract practice and by contract practice as applied to medicine is meant the carrying out of an agreement by the physician or a group of physicians as principals or agents, a corporation, a political subdivision or individual, to furnish partial or full medical services to a group or class, of service on the basis of a fee schedule or for a salary or for a fixed rate per capita. It goes on to say that contract practice per se is not unethical. However, certain conditions or features, if present, make a contract unethical; among which are:

1. When there is a solicitation of patients, directly or indirectly;
2. When there is under bidding to secure the contract;
3. When the compensation is inadequate to assure good medical service;
4. When there is interference with reasonable competition in the community;
5. When free choice of a physician is prevented;
6. When the conditions of employment make it impossible to render adequate service to the patient;



7. When the contracts, because of any of its provisions or practice, results are contrary to sound public policy.

Now, there are seven criteria which we will need to take into consideration when it comes to the participation by any of the members of the Medical Society in a contract with your organization or any similar one. The saying would hold true in indirect participation growing out of quite possible and as we see it, quite likely necessity for consultation in the operation of your plan, and, thirdly, at least until you reach a time when you can control the situation by maintaining your own hospital, by the necessary contacts in the local hospitals, for your hospitalization would have to be cared for. I think it might be well for you lay gentlemen to know that the Medical Society of the District of Columbia, being a component unit of the American Medical Association; that the American Medical Association has a membership now of about 106,000 physicians out of the approximately 160,000 physicians who are qualified to practice medicine in the United States. That, of course, in itself narrows the field very materially when it is considered that among the 60,000 must be reckoned the retired, the inactive, those who by reason of some official connection are not in active practice of medicine, and therefore the system of ethics which is mandatory upon all of these practitioners must receive our careful consideration before we can approve contracts or medical cooperation with the corporation. Once we have been assured that the corporation itself is under the law capable of practicing medicine. All of these things, Mr. Pennington, together with certain other considerations which our committee thought it might be well to bring to your attention, have led us to feel that the time is premature for us to be able to suggest or present some form of useful cooperation until we have assured ourselves of these points.

The other thing that has occurred to us, sir, is that seventh item in the criteria for the ethical character of a contract with a corporation, and that has to do with whether it is consistent with sound public policy. We conceive ourselves to be responsible in a measure for the welfare of the citizens of the jurisdiction in which we practice and we wonder whether the plan which has been so carefully worked out for your organization, whether it will actually perform for the members who join it, just the function that you de-

sign for it. We know in our contacts a good deal about human nature; we know how people when they have trivial illnesses most any doctor who is licensed and who can be found on the corner will do, but we also know that when serious illness, when complicated and difficult cases arise, and those are the cases which strike heavily upon the budgets of families, that nothing but the best will do. I think each of you may ask himself what he would do under circumstances of that sort. It is true that you might say to yourselves 'I have paid my dues in this organization and I have paid my dues because I wanted to escape the great burden that comes from the great (grave) danger, and complicated situation, but I am looking over the personnel of our staff and my neighbor tells me that somebody else knows a great deal more about this situation; somewhere else I can get the service that is needed to save this desperate situation,' and under those circumstances we feel your members are likely to do what everybody else will; they say 'To hell with expense, I'm going to get the best. I don't care where I get it', and when that begins as it is almost sure to begin in any large group very soon, then we begin to wonder whether you are going to be able to do for your people what you project to do, and whether to that extent the project is of good sound public policy. One constructive thought has come out of our thinking about this and that is that the principle of dividing the cost of illness among many people to spare the resources of the person sorely stricken is an admirable one and one we would like very much to see succeed. But if your organization could in some way convert itself into a financial organization so that the resources of the group can be available for all of your members when these catastrophic situations arise and if the very serious objection to any proposition of this sort should arise, namely, the tendency of human beings, when they can get all the medical attention they want and are entitled to it by money already paid, to want more and more and more, much more than is necessary and often very much more than is good for them, whether that may not swamp your organization when it comes to practical operation and whether if you converted it into a purely financial proposition, whether that tendency might not recur by writing your contracts in such way that in the course of an illness the corporation would be re-

sponsible for, say, 75% of the cost. I make that proposition just for discussion—so that the item of self-interest will come in and your members would take heed as to how much they would become responsible for the 25%. I think that is as far as we can go as to practical and helpful suggestions at the present time and having stated these difficulties that we see before us, when it comes to advising our members, and many of them have already asked our advice and we have been unable to advise them, if they can be successfully answered, then I think our meeting will have been very helpful.

Mr. Penniman: Thank you, doctor.

Dr. MacAtee: I wonder if some of the members of the committee have some questions to ask or suggestions to make for the benefit of this Board of Trustees. Some of the things I have said may need elaboration. Dr. Groover, do you think of anything I have omitted, that ought to be said?

Dr. Groover: I don't know, Dr. MacAtee, of anything you have omitted—perhaps one or two things that might be emphasized or clarified. In the first place, before I say anything, let me make it plain that I have no personal interest in what this group does for the very simple reason that I have practiced medicine now some 40 (30) years and my days of practice are nearing an end in five years or six years, so it doesn't make any difference to me personally what you do or what you don't do. To some extent, that is true of some of my colleagues who are with me. I think when we boil the whole thing down we will find that the fundamental thing that concerns the medical profession and actuates it to look askance at such developments as this, is the consideration as to the effect it may have on the quality of medical care, and I believe that the medical profession as a whole would be perfectly willing to waive almost any other consideration if they could be convinced that it would not tend to the deterioration of the quality of medical care. The medical profession generally believes that. Now, they may be wrong, but they are overwhelmingly of that opinion. It is difficult to convince a layman of that, I know, and perhaps to do so would be an almost futile undertaking. I will call your attention to just one thing that will give you something to think about: When I graduated in medicine in 1898, Germany was a leader in medical science, perhaps next would come France,

next would come England, and somewhere way down at the bottom of the list, came the United States. We were backward. Well, now, it is at least significant that at about that time these social schemes began to be introduced into Germany first under Bismarck as a purely political movement, and later on they have spread. Now what has happened. This is not proof, I know, but it is suggestive. Is Germany any longer the leader in medical science? No, it is not. Is France? No, it is not. Is England? No, it is not. Leadership has passed from Europe where these various social schemes have been tried out, to the good old U. S. A. Now that at least is significant and I think that while we must be coming up the scale, they have to some extent gone down. America no longer goes to Germany for its post graduate education. As a matter of fact, many Europeans are now coming to the United States for training, and I mention that one thing to indicate that the thing that concerns the doctor is how these different things are going to affect the quality of medical care in the United States and if we don't have a broad enough vision to sustain and to constantly increase the quality of medical care, your economic considerations are worse than failures and I think you should give careful consideration as to this for that is the thing in the last analysis that concerns the medical profession, as to how and what effect it is going to have on the quality of medical care. Doctors who have studied it feel that it will be bad. Maybe they are wrong, but there is certainly sufficient evidence to justify that opinion. I think that is about all I have to say.

Dr. Verbrycke: Mr. Penniman, ladies and gentlemen, I hadn't intended to say anything, but I think there are several points. First, most of you are laymen and I think perhaps we might bring out a little about what medical ethics are. The system of ethics was not devised for the protection of the doctor or his interests, but in every case from the time of Hippocrates down, has been made for the good of the patient. I think that you will know, that you will realize in the long run the doctor is not selfish by reason of our emphasizing two points: First, if a doctor ever invents some wonderful discovery of some sort, he is not allowed by medical ethics to patent it, it goes for the good of humanity, and, second, the doctor is unceasingly developing preventive measures, which takes money right out of his own pocket. We now have the tests for Scarlet



Fever, Diphtheria, etc. where they can be prevented. I think those two examples will show that we are not speaking from a selfish standpoint, but we do have the good of the patient at heart. I am sure that all of us appreciate the high ideals and aims of this organization, and we are heartily with you in that. The only thing is the method of achieving that and I don't think there is such a very big difference between what the doctors can agree to and what you wish. I think there are just two small points but that the first and main consideration lies more upon the sixth one of those principles of medical ethics, I think it is the sixth, and that is that the patient should have always a free choice of physicians. Now to bring that down to a practice, to your own group from a practical standpoint; I have no doubt that you can get good doctors on your staff as full time salaried doctors. You can't have the best. There are two or three reasons why you can't have the best. One, there is no such thing as the best in a broad classification. In other words, we may have fifty good Ear, Eye, Nose and Throat Specialists in Washington and maybe only one or two who are capable of taking an open safety pin out of a lung. We may have an excellent surgeon when it comes to certain things like Thyroid operations. He may be way below the best when it comes to —. There can't be any best. Medicine is so specialized that certain men stand out in one little tiny thing, perhaps in which they are best.

In the second place, because unless an organization has free choice of physicians the best doctor is not permitted. All members of the American Medical Association are not permitted to have a part with it. Now, doctors are very jealous of the privilege of belonging to the American Medical Association because practically all good doctors in the United States are members and they wouldn't give up the prestige to accept a salaried position if they knew it meant the likelihood of their not being able longer to continue their membership in the American Medical Association, and it is mandatory and absolutely compulsory upon us. Unless the American Medical Association would see fit to change them, no member of our Society could have anything to do with an organization which would not permit free choice of physicians.

From another standpoint the income of good doctors is higher than any salary you could afford to give. That is



not accomplished by big fees. You aim to spread the cost of medical fees over many. The doctors in the higher income brackets spread many fees over many patients, but the best doctor would not accept a salaried position for anything you could possibly pay.

That brings you down to two practical points. I see no reason why your organization should not instead of having salaried—I am speaking personally now, not for the Medical Society. I see no reason why you couldn't have free choice of physicians, that is having every member of the Medical Society who would agree to live up to certain fee tables, to have the choice of being chosen by the patients, to have only one salaried man in your organization, the Director, who would serve not in a medical capacity, but in an administrative capacity entirely, and that sort of proposition would entail something such as Doctor Macatee suggested, whereby the patients pay a little bit of the cost. Of course, the Medical Director would have to have a certain amount of supervision as where any patient was running up too large a bill, or if there were some unscrupulous doctor running bills up too large but with those two things in mind, I feel pretty certain that the Medical Society and this organization could get together and be very helpful to each other; so I want to leave, from my standpoint, that one thought, to see whether instead of having salaried personnel, you couldn't find it possible to allow the patient the free choice of physicians, which is the big stumbling block as far as the doctors are concerned.

Mr. Russell: Expresses appreciation for the doctors coming here.

Mr. Loomis: I would like to inquire whether the committee has given consideration to the fact that there are other group associations in existence whose history over a period of time and through a fairly large clientele has been highly commendable and helpful and whether that fact, taken with the fact that in our own organization we are a voluntary association operating through the corporation patterning our work after the successful operation of a very large number of these group associations; whether that has been taken into account and the success of those organizations recognized, or whether you have given consideration to the development of those associations, that have done such capable work, that other associations are steadily growing up, of which ours is not a direct pattern, but

certainly taking a leaf out of their experience and being carefully developed along lines which are not new to us or new in the field, but have proven over a sufficiently long time useful service to groups similar to ours. Has the committee given consideration to that?

Dr. Macatee: I might say that the committee has given consideration to these groups which have grown up throughout the country, the most notable of which is the Endicott-Johnson Corporation in New York. There are others, however, and we have felt that there were conditions surrounding those groups and organizations which set them aside particularly as specially favorably placed to succeed. We notice in your Articles of Incorporation that, what shall I say, that the benefits of your purpose is available for any employee of the Federal Government wherever he may be placed unless his employment happens to be in the Army or Navy where medical care is part of his emoluments; and we have felt that we should have to be very slow before we gave our endorsement to a matter of this sort because we must recognize that, potentially at any rate, this organization by virtue of its Articles of Incorporation, might involve about one-third of the population of the District of Columbia, and, therefore, the question of public policy and its effect upon the general medical care of the whole community would have to have our careful consideration for the reason that, suppose this organization should achieve at least the theoretical possibility, that would leave the care of the rest of the population of the District of Columbia in the hands of the medical profession as it exists, with the total obligation for the indigent, the unemployed, the dispensary and staff work of the hospitals, and leaving the very large colored population to the colored profession in whose hands that practice largely rests, that, of course, would have a profound effect upon the whole public economy of the District of Columbia and we would need to give careful consideration of it.

Mr. Russell: (Raised the question, as the doctor had said, if we get real sick, would we not go looking for an outside doctor.)

Dr. Macatee: You will, and I think it will wreck your organization.

Mr. Kirkpatrick: You mentioned in the opening part of your remarks, I understood you to say that, you started

from the premise that this corporation started to practice medicine. One of the purposes of this organization is to provide medical attention for those who—

Dr. Macatee: May I interrupt to say that I did not state that as a premise, but as one of the things we would have to examine carefully before we can give approval and advice (cooperation) to the corporation.

Mr. Russell: We expect to avoid that situation.

Mr. Kirkpatrick: One of the purposes of this organization is to provide medical attention for those who don't receive it because they can't afford it.

Dr. Macatee: I would say I don't know that that would enter into the situation if it came to the question of judicial interpretation whether it is a corporation practicing medicine, or not, I don't know; I am not a lawyer, but I would say I don't believe that question would arise. It would arise entirely from the fact that a corporation is in fact a person and a person must be licensed, and it would depend upon whether the corporation is entitled to practice medicine. The Medical Society takes an entirely different view of the situation for the reason there is no, in our opinion, there is no person in the District of Columbia, Federal employee or otherwise, who can't get medical attention when he needs it, and if he has no money and no prospects of having money, he can get it under municipal auspices. If he is short of money and by reason of illness is unable to pay in cash, the cost of his medical care, the medical and dental professions have already set up a mechanism by which he may budget the cost of his care over a period of five, six, seven, eight or nine months, the cost of which is defrayed by the doctor, dentist or hospital involved.

Mr. Kirkpatrick: The cost would be on a higher scale than we could provide the same service for.

Dr. Macatee: I think you will find that the scale of fee for people in that level will always be scaled down to their level. When it becomes necessary for them to apply to . . . I am speaking by and large and not with reference to an occasional fee. When a doctor by bad judgment or by . . . occasionally may oppress someone, but when a patient is in an economic level where he has to apply for relief of that sort, the scale of costs immediately goes down to his own level. Of course, if he can't meet the cost on a reasonable basis of compensation for services ren-

dered, then the resources of the Community Chest come into play on his behalf and he may receive his services gratuitously and at the hands of the medical profession who compose those staffs entirely gratuitously. I want to bring out for the benefit of all the laymen present, because there is a singular lack of information on that point, that the staffs of the hospitals who attend any patient in the wards of the hospitals who receive any help from the Community Chest, do so without any compensation from the patient or from the institution.

Dr. Groover: May I say something regarding one or two points that have been raised. Doctors generally extend unlimited credit; they are the only group of people in the country that I know of who do extend unlimited credit. Anybody can come into my office tomorrow, it has been so and I am sure it is so with all of these doctors here; their credit rating is never looked up before we treat them. We treat them first and do the best we can for them, and the question of getting paid for it is the last thing that is considered. Now, a business man would consider that rotten, and maybe it is. We know perfectly well that doing business on that basis results in a very considerable loss and we know perfectly well from experience, for instance, under the Workmen's Compensation, which by the way we don't consider approved, but we practice under the Workmen's Compensation. We know by experience we can attend groups of individuals where we know there will be no loss in collections, about 25% cheaper than we can under the present scheme. Is that clear? The medical profession extends unlimited credit and for that reason there is necessarily a large loss in collection. They never ask the patients who may come in the office . . . , but few of them I dare say are wise enough to know better. I should say at least 90% of the doctors practicing in the District of Columbia do. If you go into his office or send for him to go to your home to see you, he will not raise the question of money. He will do what he can for you and run the risk of getting paid when he can. It is true that under such a system, good or bad, there is a considerable loss in collections. Certainly doctors can't get it when the patients haven't got it. That is obvious. He might as well stop trying. I have stacks of hundreds of files in my office now, and it is perfectly true that if we deal with a group, making a bargain with a group, we can do it about 25% cheaper.



Mr. Zimmerman: Is it true that about 60% of doctors' accounts are collectible? The national average about 40% of their accounts are never paid?

Dr. Groover: I presume there is some evidence on that point, but I don't know and I doubt if there are any very accurate figures on it. It varies so in different types of practice. I will give you something in my own experience if that will be helpful. Our losses are about 25%. Strange as it may seem, most of those losses are . . . because they deal with a different type of individuals and I think we are perhaps slightly high.

Mr. Zimmerman: Doctor, do you feel—I am wondering if you feel that a cooperative arrangement to make certain that the doctors will be paid for what they do, thereby stabilizing the income of the doctors who do the work, if that would be desirable to the medical profession. Etc. Etc.

Dr. Groover: I think it would be exceedingly unfortunate to stabilize the income of the medical profession, because there is just as much difference in the qualifications of doctors as there is in the qualifications of stenographers. Some of them can do it and some of them are rotten. . . . I may pay one stenographer \$200 a month. I actually have another who isn't worth \$50. . . . It would be unfortunate to stabilize the pay of doctors.

Mr. Kirkpatrick: Dr. Macatee, I think you stated that group practice in foreign countries has tended to deteriorate the quality of medical (?). Is there any evidence in this country so far as it has gone.

Dr. Groover: I should say none, for really it hasn't gone very far.

Dr. Verbrycke: The most successful, apparently, project of the kind is a privately owned concern, the . . . Of course, all of the different cooperatives vary a little bit. The Endicott-Johnson is an industrial concern. There are a few which have been sponsored by doctors out in the far west, in Washington and Oregon. One sponsored by the Medical Society of — County, Georgia. They are apparently having good results, except that they are having troubles with their finances. Their bills are behind and they have not been able to keep up.

Mr. Russell: How old is that?

Dr. Verbrycke: That's about a year or a year and a half old. They are so few and they are so different, we don't



have a great deal to go on. I would like to ask Mr. Zimmerman, 'Did you not mean by stabilizing the doctors' income not so much putting it on a fixed basis as eliminating the loss, stabilizing more than equalizing, and that meant, I think, on Dr. Groover's assertion that we could practice medicine at a 25% less cost than we do if we were assured of our income. There is no question but that we could do that. There is no question but that the members of the Medical Society would probably be for such an organization if the patient had free choice of physicians.

Mr. Zimmerman: We would like to look on this arrangement as an arrangement which provides through cooperation the possibility of a method of payment and from what you have said this evening I sense that you are in sympathy with that aspect. I am interested in what you say about the free choice of doctors. I think it would be helpful if we explore that a little further together. Do you have the notion, tell me, that with a group of employees whose incomes average—that is, 60% of the incomes are \$1800 or less, who must provide shelter, clothing, food, school books and . . . that families have to purchase, do you have any notion that that group of people have a free choice of doctors now in our present arrangement?

Dr. Verbrycke: Emphatically, I do . . . and they could do even better if losses were cut out.

Mr. Zimmerman: I don't think they have a free choice of doctors.

Dr. Verbrycke: I doubt if the patients who come to me have average incomes of over \$1800, and I am supposed to be a doctor in the higher brackets.

Dr. Groover: Same here.

Mr. Russell: The average income in Washington is \$1500 to \$—.

Dr. Macatee: I would like to ask Mr. Zimmerman . . . whether he means by that an income of \$1800 per year automatically limits people with such an income in their choice of physician to the poorer class of physician. Is that what you mean?

Mr. Zimmerman: My point is that most of these people have no financial reserve, have no savings and can't afford to have the annual periodic physical examination and for that reason they only employ the services of a doctor when they are in trouble, sick and think they are going to die, and they are going to have to select their doctor from the

group for whose services they can pay. I don't think they have a free choice of doctors in the sense that you gentlemen have been discussing it tonight.

Dr. Conklin: I would like to say for the information of the ladies and gentlemen present that the Medical Society of the District of Columbia took cognizance of the rather desperate situation that most everybody was in, including the physicians themselves; the financial outlook was not good. In the midst of that the Medical Dental Service scheme was worked out. I believe that most of you are familiar with it. We have certainly tried to publicize it. It means that the whole fee and the whole expense may be definitely budgeted; the doctor's fee, the hospital fee, the laboratory fee, that is money that would go to —, would all be lumped right in one sum and that is collected through this Medical Dental Service Bureau at 8th and I. 10% is retained to maintain the overhead and we may say that the Medical Dental Service Bureau has just gotten by financially, and that is all we expected it to do. We have taken care of a great number of people and I am sure that Mr. Zimmerman's question can be answered right now by saying that if we will take Jones down here on Section Street, wanting to have his tonsils taken out, and he picked one of our Nose and Throat men who has a large practice. He would go down to the Medical Dental Service Bureau and say 'I want Dr. — to take my tonsils out. I haven't but so much income. Right down there a man by the name of Trainor takes out a pencil and paper and finds out what his income is, how it is budgeted, how much goes for clothing, shelter, etc. He finds that the man has left about \$5.00 or \$10.00 which he might possibly put on a medical bill. This has actually happened. It is not theoretical or hypothetical. They say I don't see how I am going to do it. He charges \$75.00 or \$50.00 to take tonsils out and this is all I have. That bureau has called up doctors innumerable times and says here is someone who wants his tonsils out. We have gone over his income and he can't possibly pay more than \$35.00 to take his tonsils out. Will you accept it? Those cases have been accepted and they have been accepted by outstanding Nose and Throat men. The same thing has been done for appendectomy. Those fees have been adjusted.

Now, then, furthermore, I would like to say there was a great number of people that were unable to pay, certainly unable to pay \$3.00 for a house visit, they might possibly

pay \$1.00 for a house visit. They might possibly pay \$25.00 for an obstetrical situation. I believe I was really proud of the local medical profession and its reaction to the attempt to get a panel of doctors who would be willing to accept \$1.00 for a house call, \$25.00 for an obstetrical case and other fees in proportion. We have that list in the Medical Society Office; on that list are men who you would be actually surprised to see there; obstetricians who would be willing to go out and take cases for \$25.00. The names are there. They signed up. We had this panel. The only requirement—they would have to be certified by the Medical Dental Service Bureau as being unable to pay more than \$25.00 for an obstetrical and \$25.00 for appendectomy and I think that very well answers what Mr. Zimmerman had in mind, certainly as far as the effort made by the local medical profession, to take care of those individuals who would not have sufficient funds.

As far as the periodic health examination is concerned, you may or may not remember: In about 1930 the American Medical Association started its insistence that more periodic health examinations be made. The slogan was established 'Get a physical examination on your birthday annually' not one single word was said about how much to pay for this examination. The thing was to have the physical examinations. I want to say that we had public meetings; the Medical Society of the District of Columbia sent speakers to various organizations to sell this idea and I also want to add most emphatically that these annual physical examinations brought the doctor from zero up to \$10.00 a day, and I am just as sure as I sit here, that if these individuals about whom you are speaking had the idea sold to them about a physical examination, they could go out tomorrow to get those physical examinations without the necessity of putting any money down. I believe it is more the lack of willingness on the part of the individual or lack of knowledge that those things haven't been done more; that is one of the main things. They are going to take care of the individual while he is well. I just believe that sort of thing can be taken care of and I believe that this Medical Dental Service Bureau has answered many of the economic problems as far as medicine is concerned. If any of you haven't been down there, I would suggest that you just drop in and say you have an income of \$1800 and that you want to

have an appendectomy by a . . . surgeon. Go down there and find out what happens to satisfy yourself.

Dr. Groover: I want to say one more word, in regard to periodic examinations. I think the reason that periodic examinations are sought after is that the American Medical Association had given such a boost and because the doctor can't realize . . . If we except the care of infants and pregnant women, the periodic examination of infants and pregnant women, the ordinary physical examination that one would get once a year at a doctor's office is worth very, very little. I know that don't sound right, but it is true. I could have all of my colleagues here examine you tonight and what they can find out by the ordinary physical examination is really very little, and they can't accomplish much; and for that I think the doctor is to blame for putting so much emphasis on its importance. It does have considerable value in the periodic examination of infants and pregnant women and I think, the slogan about 'consult your dentist twice a year' is all right, take it by and large, the periodic examination by this group of people would be worthless. Am I right?

Dr. Macatee: No, sir, you are not. It is true that anyone of this group might come into my office and have a thorough physical examination and might go home and drop dead. That is based on the fact that you might have coronary sclerosis, which simply means you have hardening of the arteries, and that to the internist is without physical signs. I think I will be able to tell you, however, that there are some indications that you are having some sporadic changes and your pace of life ought to be modulated, and that is a good deal. To answer Mr. Zimmerman's question practically, anybody with any income, unless he had to spend 100% of his income for the actual necessities of life, in which case he — medically indigent so far as our experience is concerned, and we would find it necessary, unless we simply gave what they required, we would refer them to a clinic where some other doctor or perhaps ourselves, would do it in the setting of a clinic where we knew we were working gratuitously, in such hours as we set aside for that purpose. From the practical point of view, anybody can get a physical examination, and that requires a careful history taken if he is a new patient, that takes time, and then it requires the careful going over of the patient himself, and then it requires the doctor going back into his laboratory for the examination

of the blood and urine, and what not. Altogether, if a man is careful and really wants the physical examination to amount to anything, it is going to consume about an hour of his time. If it doesn't require an hour of his time, it is going to require the services of his secretary, which, of course, is going to enter into the cost of the thing. If we take about \$10.00 as the cost anybody getting \$1800 or \$1400 in the Government can, I think, in 95% of the doctors' office, in this city, get the thing done and pay for it \$1.00 a pay day.

Dr. Brown: I think the greatest value of the periodic checkup is the early diagnosis and the—

Dr. Macatee: \* \* \*

Dr. Brown: Therefore, it comes in that preventive field. Another thing I want to ask \* \* \* the statement was made that a deterioration of the medical practice has resulted \* \* \* of clinics. Have any of you gentlemen investigated the results of the Endicott Johnson \* \* \* or any of the large clinics? \* \* \* an improvement and a better practice of medicine because of the availability of every \* \* \* means or any consultation.—

Dr. Macatee: I would say that the statement was made as to the deterioration as to the general practice of medicine in a nation. It would depend upon the universality of the application of the practice in a case of that sort. Any co-operatives or groups in the United States have touched such a very small \* \* \* of the population of the country that it has not affected the general status of the \* \* \*. But let us get down to cases and consider what would happen in the District of Columbia provided you were able to obtain the maximum of enrollment in this corporation. As I pointed out a while ago, it would involve about one-third of the population of the District of Columbia. Well, one-sixth anyhow, of actual subscriptions, because there are about 100,000 employees. Multiply that by 3.3, you see what it would do here as an economic thing. \* \* \* It would simply result in the necessary exodus of a large part of the medical profession of the District of Columbia, except those of us who have been in practice 30 or 40 years and are about to go on the shelf anyhow. It would result in the \* \* \* of the new blood, which is necessary to keep up that end of it. It is impossible in the spur of competition in which medical men are by reason of economic force required to keep themselves abreast of the times and a little ahead, if they are going to get anywhere and in addition to



that I would like to call your attention to the fact that we are all in accord with the idea that if people can lump their resources and those who are fortunate, their money goes to those who are unfortunate, that is all right, but you must remember that the medical profession recruits itself. It educates itself, it enlarges its capacity of itself and it is done by the social underwriting of the sum of medical fees that the whole population pay so that any social arrangement by which that underwriting is so manipulated that free competition, the free choice of physicians is limited, then you wreck the works. Now that will happen just in proportion as a social experiment involves large and larger blocks of the . . .

Dr. Brown: . . .

Mr. Penniman: . . .

Mr. Loomis: It seems to me that these gentlemen representing the Medical Society of the District of Columbia have the very genuine concern and apprehension about the effect of the operation of this voluntary organization in this area, a concern which we want to recognize honestly and deal with sympathetically. The point raised by Dr. Macatee that such a large element of this corporation reaches the nth degree, that a large proportion of the doctors in the District will be driven out of business, seems to me to be easily answered, that as we grow to that size, if we ever do, we will absorb the physicians here in the District, presumably very much like the . . . that we contemplate for our present organization and that if that number of physicians is needed in this area, and are now making a living, that number would continue to be employed and continue to make a living on an . . . basis of employment and income and because I recognize the serious concern of the group here reflected, I have no doubt but . . . runs through the profession in the District. I would like to ask a representative of this group whether it would not be agreeable to the committee and their associates to let this program of ours which is equally serious and built upon the same principles which they hold in their medical fraternity of ethical service to our associates in this membership, if they wouldn't and can't very properly defer any decision or endorsement of this group until we have lived along a while and they have an opportunity to judge us, not from a standpoint of what any other group has done, but from the standpoint of how we operate here.

I assume, although I don't know, and haven't asked, that the Medical Society has not endorsed any considerable number of the other group associations and they are continuing to perform a very satisfactory service. I don't know and would seriously question until informed whether the American Medical Association has endorsed the Endicott-Johnson plan or whether they have endorsed any of these other plans and if that is a fact, can't they realize that we are just as seriously interested in doing the right thing by the medical group as they would do for us, simply delay any decision or any expression of point of view until we have operated, we being free all the time to consult them they being free all the time to consult us, working together cooperatively, each recognizing the others ability and honesty, working it out together on a plan satisfactory to this group here.

Dr. Brown: The question was stated that Germany has lost her place in the sun and her power to impart knowledge. I would like to ask you if the Hitler regime in Germany has not been responsible. After the war these things have changed in Germany, Vienna, Paris and London, and since the war all of that has been lost to the United States, *who* has been much more progressive, *who* has had more means and more funds to proceed along these lines.

Dr. Groover: I think about Germany, there are many factors, but it is merely an implication . . .

Dr. Brown: As a matter of fact, our investigation and my own investigation of these clinics—we find that better medicine is practiced than was practiced before in the same locality. I think that can be borne out also by the District.

Dr. Macatee: Mr. Loomis made some statements to which I would like to reply, that the economic aspect of this project—I had not intended to touch upon it at all. It is not at present a matter that had received very much consideration but the discussion grew out of other things that had been said and if the corporation did succeed to the nth degree and if all of the other factors which I adverted to when I first spoke were ironed out, then of course the services of the organization would have to be conducted by the medical profession, because that is the . . . of the service, and they would be recruited from somewhere, presumably to the extent that they . . . from the

District of Columbia, but the difficulty at present that we came to discuss with you and advance was the . . . we were unable to bring some concrete plan of cooperation and that we are unable to see how certain of these principles of ethics by which we are bound can be adjusted so that we will be able to cooperate in some way and to get such information as we could so that we will be able to advise our membership what their attitude should be.

Mr. Penniman: Gentlemen, speaking in behalf of the Board of Trustees of this organization, I want to express to you gentlemen our very sincere appreciation of the courtesy of this visit, your remarks and your contribution to this meeting and to give you our assurance that everything that you have had to say here this evening will be given very careful consideration. We thank you for coming up and we hope that we may have the opportunity of seeing much more of you."

#### Cross-examination resumed:

Dr. Brown reported to the Board that he was in negotiations with Dr. Scandiffio and Dr. Lee about salaries two months after this meeting. Doctors Scandiffio and Lee tendered their resignations to the Medical Society. I informed the Board of Trustees of Group Health of this situation. After the resignations were tendered, the Board of Group Health consulted Mr. Newman, a member of the legal staff of HOLC, Mr. Russell, General Counsel of the HOLC; Mr. York, a member of the legal staff of HOLC; and Mr. Keeley, a member of the staff of HOLC. I advised with Drs. Lee and Scandiffio and told them to withdraw their resignations because this was necessary in order for them to keep their hospital privileges. I knew that at the time Drs. Scandiffio and Lee had tendered their resignations, they could no longer remain members and continue to violate the rules of the Medical Society at the same time. After the resignations were withdrawn, a charge was made against the doctors that resulted in a hearing. At that hearing Dr. Scandiffio was represented by four members of the legal staff of HOLC and there was a battery of attorneys for the Medical Society. Evidence was offered on both sides. No person connected with Group Health or the Medical Society ever made application to the Home Owners Loan Bank Board for authority to produce the contract.

At the hearing, I guess the contract was produced under the authority of the General Counsel of the HOLC.

I never had any doubt about the legality of Group Health nor did the attorneys for Group Health.

Q. Did there come a time when you changed your views?

A. After we found out there was a good deal of action directed against Group Health, we decided there would be a test.

Q. Did your own board of trustees change their views about the legality of G. H. A.?

A. No. Change their views about the legality, its legality?

Q. Yes.

A. No.

Q. You knew Mr. Russell pretty well?

A. Yes.

Q. He, as counsel, came in frequent contact with you?

A. He was a member of the board of trustees; not as counsel.

Q. Did you never discuss with Mr. Russell, after Dr. Macatee had brought the attention of the group to the question of the legality of Group Health Association, after he had brought the attention of the board to that in July, as to whether or not its by-laws should be revamped?

A. No, I didn't discuss that; I recall that that was suggested to the board of trustees and, I think, by Mr. Russell.

Q. I ask you, Mr. Penniman, if the statement which Dr. Macatee made to you that night, on July 26, didn't cause you as a member of the board of trustees, through your counsel, Mr. Russell, to begin an investigation into the legal setup of the G. H. A., as it then stood?

A. I don't think so, just from the way you put it. I think Mr. Russell perhaps, investigating the by-laws, suggested certain changes which he thought should be made, and I think the board of trustees, relying on his judgment, agreed that they be made.

Q. Why was the change in the by-laws suggested?

A. I don't think it was suggested.

Q. I will show you something to refresh your recollection: take a peek at that. Doesn't that refresh your recollection? (Handing witness Item 1—Def. Ex. 48.)

A. Yes.

Q. Now, then, is it not a fact, having read that letter of Mr. Russell's, that you know that the legality of G. H. A., as to whether it was conducting an insurance company business at that time, was seriously in question, even among yourselves, forgetting the medical profession?

The Witness: I think there had been a great deal said about the question of legality. I had heard it and seen it in the papers. There was a great deal of discussion. My recollection is that Mr. Russell, as we progressed, as we went along, as our legal advisor made recommendations for such changes as he thought would be beneficial to the organization, presented them to the board, and the board agreed with him and followed his recommendations.

Q. The motive was to strengthen the legal position of G. H. A., was it not?

A. I think you will find the by-laws were written some time earlier in the year, and that Mr. Russell, as we went along, where he found any situation where he needed it to be strengthened, recommended to the board such changes, and the board adopted the recommendations.

Q. Now, with that letter before you, let me ask you if, on the 16th day of November, 1937, Mr. Russell then didn't present to the Federal Home Owners Bank Board what was then a revamped set of by-laws, and if he didn't assign as the reason for the amendments that they were "to strengthen the legal position"?

A. Yes. He didn't revamp the by-laws; he made certain changes which he felt, as an attorney, were necessary to strengthen the association's position.

Q. He revamped the by-laws to get around the situation that it was conducting an insurance company business in the District of Columbia without authority, did he not?

A. I think he limits, in that letter, the reasons for the amendments.

Q. And those changes were made at that time because he, as general counsel, felt it necessary to amend its by-laws in order to strengthen the legal position of G.H.A. if it should be determined that the association was in the insurance business, isn't that true?



A. I think that is the position that Mr. Russell took; it was his idea.

Q. Now, were you so certain then, even after the amendments had been submitted to the board and, as you say, approved; that you were still not violating the law?

A. What? Were we certain that we were not violating the law?

Q. Yes. Were you certain of that?

A. I had no idea we were violating the law.

Q. Will you be good enough to take a look at the second sentence of the last paragraph of the letter and see if that refreshes your memory? (Item 1—Def. Ex. 48)

A. Yes, that refreshes my recollection.

Q. That refreshes your recollection?

A. Yes.

Q. Now, does Mr. Russell there state or reflect the views of the board which approved these by-laws when he stated, "This revision excludes memberships except in the case of employees of the executive branches of the Government, excluding the Army and Navy, and this provision is made to assure us the benefit of an exception from insurance regulations if we are held to be an insurance company;" does that reflect the views of the board of Home Owners Loan?

A. Well, I am not an attorney, Mr. Leahy, and Mr. Russell undoubtedly went into this question very carefully; and he presented his views to the board, we accepted his views.

Q. Do you recall now, after reading this letter, why it was that Mr. Russell made the statement, "if we are held to be an insurance company"?

A. I think there was a great deal said about Group Health; that it would be held to be in the insurance business, an insurance company.

Q. That was the thought in your own group?

A. No, that was the thought outside the group.

Q. And your own group was not certain about it?

A. I personally wasn't, but the lawyers would have to work that out.

Q. Then your lawyer advised you he was not certain?

A. Yes.

#### Redirect examination:

I expressed to Dr. Neill that Group Health involved group practice and prepayment and what the duties of the

Medical Director would be. We went into the proposed plan in detail.

Over the objection (and exception) of defendants of incompetency, irrelevancy, immateriality and hearsay, the witness was permitted to state what Mr. Zimmerman told him Dr. Woodward said to Mr. Zimmerman, as follows: After Dr. Woodward called on Mr. Zimmerman, Mr. Zimmerman told me Dr. Woodward said that he was going to oppose the organization, that they were very much concerned about this organization and that if money could be appropriated for Group Health, it could be done elsewhere and that he was very much against it and that the subject was going to be discussed before the annual meeting of the AMA at Atlantic City. Mr. Zimmerman told me that Dr. Woodward said he was a member of the AMA, and that they were going to organize to oppose Group Health.

I later talked to Dr. Hooe over the telephone and at the Metropolitan Club. He suggested a plan which the doctor thought would work. I stated that would make Group Health a collection agency for the benefit of the local doctors. Under the plan suggested by Dr. Hooe, Group Health would have a membership, would collect dues but need not have a staff of doctors or nurses or space or equipment, as it could use the local doctors and pay for the services performed on its members by these doctors out of the dues collected and under that plan a member was to have the choice of the doctor and we were to pay a doctor out of the funds collected. I told Dr. Hooe that such a plan wasn't at all along the lines contemplated in establishing Group Health. Dr. Hooe was chairman of the Compensation, Contract and Industrial Medicine Committee of the Medical Society.

I talked again to Dr. Hooe on the telephone and told him I felt very keenly about the way Dr. Lee and Dr. Scandiffio had been treated, and that if my understanding was correct, they were entitled to a hearing, by virtue of a letter sent over his signature, and that Dr. Lee and Dr. Scandiffio replied to that letter requesting a date to be set for the hearing, and also stating they would like to appear with counsel, and it was the understanding that that hearing would be before this C. C. & I. M. Committee, and that the hearing had never been granted. As a matter of fact, Dr. Lee tendered his resignation before the second meeting and

Dr. Scandiffo was tried on the basis before the Executive Committee. I told Dr. Hooe, "You knew at the time that you had promised Dr. Lee that if he would give his resignation to Group Health, that you would be glad to recommend the cancellation of all charges against him." Dr. Hooe didn't deny it.

I had a conversation with Mr. Sandidge of Emergency Hospital and informed him that Dr. Neill had told me that Dr. Lee was still a member and that his resignation had not been acted on. Mr. Sandidge said that they would write him a letter and reinstate him.

#### Recross-examination:

I talked about Dr. Woodward's visit with Mr. Zimmerman personally. There were collectors through the departments that collected dues of Group Health members. At first a voluntary assignment was used authorizing a deduction of the dues from the member's Government salary check.

THEODORE WIPRUD, a witness for the United States.

#### Direct examination.

By Mr. Lewin:

I have been Secretary of the Medical Society of the District of Columbia since June 1, 1938. Before that I was Executive Secretary of the Medical Society of Milwaukee County. Dr. C. B. Conklin was Secretary of the Medical Society of the District before me. I know Dr. Conklin's signature. The signature of Dr. Conklin is on the following minutes of the Medical Society:

January 6, 1937

March 3, 1937

June 30, 1937

July 29, 1937

October 6, 1937

October 15, 1937

November 3, 1937

November 10, 1937

November 11, 1937

November 17, 1937

November 22, 1937

November 24, 1937

December 1, 1937

December 8, 1937

December 15, 1937

January 5, 1938

February 2, 1938

March 2, 1938

March 16, 1938

April 6, 1938

May 11, 1938

October 5, 1938

and on the following minutes of the Executive Committee of the Medical Society:

June 1, 1937	November 22, 1937
June 21, 1937	December 6, 1937
June 24, 1937	December 10, 1937
July 12, 1937	December 27, 1937
July 27, 1937	January 24, 1938
September 8, 1937	February 21, 1938
September 27, 1937	March 26, 1938
October 11, 1937	March 29, 1938
October 25, 1937	April 11, 1938

I signed the minutes of July 6, 1938, August 1, 1938, August 3, 1938, September 7, 1938, and October 3, 1938.

Chapter 5, Article 1, Section 4 of the Constitution of the Medical Society provides:

"The secretary-treasurer shall make full records of the proceedings of the Society and, after their approval by the Society, preserve them in secure and permanent bound form."

Chapter 7, Article 3, Section 1, provides:

"The Executive Committee shall maintain the following organization: the senior elected member shall serve as Chairman, his immediate junior as vice-Chairman, and the Secretary of the Society as Secretary without vote. They shall keep full records of its proceedings."

The Government then offered in evidence against the defendants the District Medical Society, Dr. Conklin, and against all other defendants as to whom a prima facie case of conspiracy has been laid, the foregoing minutes with the exception of the minutes of January 6, 1937, and March 3, 1937, and the offer is only of the portions of the minutes which relate to Group Health, and as evidence against other defendants comes in which tends to make a prima facie case of conspiracy against them, that these minutes dealing with Group Health be received as evidence against them.

Ruling on this offer was held in abeyance at the request of the defendants.

Gov. Exs. 32 and 33 are rosters of the membership of the Medical Society from January 1, 1937, to December

20, 1938. Gov. Exs. 34 and 35 are lists of the officers and committeemen of the Society from July 1, 1936, to July 1, 1937, and from July 1, 1937, to July 1, 1938.

Gov. Exs. 32, 33, 34, and 35 were received in evidence.<sup>4</sup>

Cross-examination.

By Mr. Leahy:

The publication at times of the committees is not accurate when there is a death or change on the committee, though it is checked pretty closely.

Redirect-examination.

My signature is on Gov. Ex. 31. It was sent to the Council on Medical Education and Hospitals of the AMA. Gov. Ex. 30 appears to be a correct copy of the reply which I received.

Gov. Exs. 30 and 31 were offered in evidence.

The defendants objected on the grounds that the letters were incompetent, immaterial, and irrelevant; there was no proof as to who answered Gov. Ex. 31 or who wrote Gov. Ex. 30; there was no showing of any authority in the writer of Gov. Ex. 30 to bind defendants and they were inadmissible as there was no showing of a prima facie case of conspiracy. These objections were overruled, exception was noted.

I think the initials on the bottom of Gov. Ex. 30 indicate the writer is Dr. C. M. Peterson, who is associated with the AMA. The Secretary of the said council of the AMA in December of 1937 was Dr. Cutter.

The further objection was made to Gov. Ex. 30 in that it enclosed regulations which are not produced and offered with the letter and the effect of such procedure is to cull out only a part of the letter. This objection was overruled and exception was noted.

Gov. Exs. 30 and 31 were received in evidence.

The Government then offered in evidence but did not read the following excerpts from Gov. Ex. 8, being proceedings of the House of Delegates of the AMA:

<sup>4</sup> Where it is stated herein that an exhibit was received in evidence and the text or substance of the exhibit is not set forth, that means that the exhibit was not read to the jury. Where exhibits were read or described to the jury, their text or substance is set forth.



Report of the Council on Medical Education and Hospitals . . .

Resolution limiting physicians on staffs of hospitals approved for intern training to members of component County Medical Societies.

Proposed amendments to Principles of Medical Ethics.

Resolution on apparent attempt of Board of Regents of the American College of Surgeons to dominate and control medical practice.

Report of Reference Committee on Medical Education.

Report of the Reference Committee on Amendments to the Constitution and By-laws.

Report of the Judicial Council. .

Report of Special Committee.

The above portions of Gov. Ex. 8 were received in evidence.

DOROTHY EVERETT, a witness for the United States.

Direct examination.

By Mr. Kelleher:

From February 24, 1924, to September 30, 1938, I was employed as a clerk-stenographer by the District Medical Society. During 1937 and 1938 I took dictation from officers of the Society and from chairmen of its committees; I took dictation from Drs. Conklin, Hooe, Neill and Sprigg. Carbon copies were made of all dictated correspondence. As soon as we found time, we would file carbon copies, which were not filed before the originals were signed by the writer. Upon occasions the correspondence was mailed before the copy was filed. The stenographer's initials were placed on the carbons. I used a small "e". I attended meetings of the Medical Society in 1937 and 1938 to take notes, that is, to get the gist of conversations of the business sessions. I did not try to get the scientific meetings. I didn't take the proceedings verbatim but made shorthand notes. The next day, probably, I would transcribe the notes not as I took them, that is, I wouldn't put down everything but only the gist of the proceedings, and then placed them on Dr. Conklin's desk. Dr. Conklin would modify them and they would be retyped for the final minutes. My initial "e" would appear on the minutes I typed. Within a few days after the

meetings the minutes were typed in final form. It wasn't my practice to attend meetings of the Executive Meeting during 1937-1938, though I took dictation from Dr. Conklin of what occurred at those meetings within a few days thereafter. I would then type up the dictation. On my vacation, there was a stenographer who might do that.

I typed Gov. Ex. 39 and signed Dr. Hooe's name to it, which he evidently authorized.

Gov. Ex. 39 was offered in evidence, together with the reply by Dr. Lee, marked Gov. Ex. 40 and Gov. Ex. 41. Defendants objected to Gov. Ex. 39 as irrelevant. Defendants objected to Gov. Ex. 40 as pure expression of opinion and Gov. Ex. 40 was rejected.

Gov. Exs. 39 and 41 were received in evidence.

The Government, with permission of the defendants, stated that on Nov. 3, 1937, Dr. Allen E. Lee wrote to Dr. R. Arthur Hooe informing him that he had sent in his resignation from the Society on Nov. 1, becoming effective as of that date.

Gov. Ex. 39 was read to jury as follows:

"November 2, 1937.

DEAR DR. LEE:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee, which will be in session on Thursday evening, November 4, 1937, at 8 o'clock p. m. in the Medical Society Building, 1718 N Street, Northwest.

Very truly yours, R. Arthur Hooe, M. D., Chairman."

Gov. Ex. 41 was read to jury as follows:

"DEAR DR. CONKLIN:

I hereby submit and tender my resignation as a member of the Medical Society.

Respectfully, Allen E. Lee."

Gov. Ex. 42 looks like a letter I typed. It bears my initial and, I think, Dr. Neill's signature.

Gov. Ex. 42 was received in evidence.

Gov. Ex. 43 was offered in evidence. Defendants objected on the ground that the letter was a hearsay statement. Objection overruled, exception noted.

Gov. Ex. 43 was received in evidence.

The witness identified and authenticated the following:

Gov. Exs.

44	54	72
45	55	74
46	56	75
47	57	76
48	62	77
49	63	80
50	66	81
51	68	82
53	69	83 and 84.

Gov. Exs.

44	53	68
45	54	69
46	55	72
47	56	75
48	57	76
49	62	77
50	63	80
51	66	83 and 84

were received in evidence each against the writer only at this time.

Government also offered in evidence the following as replies to the above letters or letters to which the above were replies.

Gov. Exs.

52	70
58	71
59	73
60	78
61	79
64	81
67	82

Defendants objected as immaterial, incompetent and irrelevant, but expressly waived all questions of authentication. At the request of defendants ruling upon these documents was reserved.

## Cross-examination.

By Mr. Leahy:

I have been a clerk with the Medical Society from February, 1924, to the end of September, 1938. I acted as secretary to Dr. Conklin, taking dictation and doing general office work. I took down notes of the meetings of the Society. The Society met regularly on Wednesday evening from October to May, excluding the last two Wednesdays in December and in May. A stated meeting deals with the election of officers and general business. I took notes at Dr. Conklin's direction. I took notes in front of the platform of the Society auditorium, which seats 500 people. I did not take down stenographically everything that was said in the auditorium; I am not a court stenographer. If a speaker were speaking on a particular subject I was not able to take down everything he said verbatim. I tried to get the gist of what was said, writing that in shorthand. Sometime later I made a transcription of my notes and submitted them to Dr. Conklin, and he went over my transcript and determined whether it was in accord with his recollection and would modify, alter, add to or subtract from the transcription. On receiving back the altered transcription, I transcribed it. Someone else may have taken minutes while I was on vacation. I didn't take notes of the meetings of the Executive Committee, as that was not the usual routine. If I did take notes of the Executive Board I would go through the same procedure I have described concerning the minutes for the Society and made no attempt to get the Executive Committee minutes verbatim. If Dr. Conklin was absent, someone would be designated to act as secretary and would revise the minutes just as Dr. Conklin had done. The minutes prepared were not always read verbatim, and if a motion were made and passed, the minutes would be read by title only at the next meeting and at times the reading of the minutes would be dispensed with. The words "Read and approved" appearing in the minutes do not mean that the minutes were read verbatim, as sometimes they were and sometimes they were not.

DR. MICHAEL DAVIS, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a Doctor of Philosophy, a graduate of Columbia University in 1906. From 1910 to 1920 I was in charge of the Boston Dispensary, a large clinic with a small hospital, and its director. I left the Dispensary in 1920 and returned to New York as Chairman of a committee on Dispensary development financed by a grant from the Rockefeller Foundation to improve the standards of clinics and dispensaries in New York and the country. I am also a consultant on hospital organization and have made studies of hospitals and clinics in different cities, such as Cleveland and New York, for example, and I was continuously with that work from late in 1925 to 1929. A consultant on hospital organization is a person who studies the hospitalization needs of a city and whether existing hospitals are sufficient and whether additional hospitals and clinics are needed, makes a report to the local organization as to what is needed, if anything, after making a general study of the entire subject in the particular locality. I organized a pay clinic for people who can pay for the care they get, including payment to the doctor in the clinic; I organized a small clinic in Boston and a larger one in New York under the auspices of the Cornell Medical College. I remained with the committee on dispensary development until the beginning of 1927; from 1927 to 1929 I was on a consultant basis; in 1929 I went to Chicago to be Director of the Medical Service of the Julius Rosenwald Fund, a philanthropic foundation established by Mr. Julius Rosenwald, the late member of Sears, Roebuck Company, for the welfare of mankind. The purposes of the foundation were to give money to worthy causes within the field of the foundation and designated for its activities. Its activities are not limited to the field of medicine, as its main field was Negro welfare and Negro health in the South. The medical side was secondary, although a fairly important part of its work. I was in charge of all the foundation's medical activities, that is making grants of any money for any medical purposes. Our business was to make a study of the desirability of making the grant where it was applied for, and I was also responsible for making studies of the



medical development generally and directly for funds in the field that is to be expended or were to be expended in the field of medical economics, that is the cost of medical care. From 1931 to 1936 I taught "Social Aspects of Medicine in the Development of Sociology" at the University of Chicago. In 1933 I took charge of a course of hospital administration and management at the University. While at the University I was in charge of the American Hospital Association, an institute designed to help men and women who were already in charge of hospitals to improve their knowledge by bringing them together two or three times yearly. I am no longer with the Fund, but am chairman of the Committee on Research on Medical Economics to which the Fund has granted money. I also served on a committee with Dr. Hugh Cabot. That committee was to study group medical practice, which Dr. Cabot, several other men and myself were members of, the active work being done a year or two years ago. That committee was organized for the purpose of studying group medical practice and its chief task was to prepare a statement of principles under which group practice should be conducted; as a hospital consultant, I made studies for the purpose usually of finding out the needs of cities for additional hospitals, their adequacy, the extent used and in some instances a study might be asked by a single institution where the Board of Directors wanted to determine how that hospital was being run and whether its management and organization could be improved. Some studies were made also for the purpose of enlarging buildings and extending facilities; in the course of the studies I familiarized myself with every phase of the organization of hospital staffs. I have been a member of the American Hospital Association for 25 years, a Fellow of the American Public Health Association; I was Chairman of the American Hospital Association Council for the years 1935 and 1936, and finished a three-year term as chairman of a committee on education; I have been chairman of a committee of the American Public Welfare Association and active in the American College of Hospital Administrators, and an honorary fellow of that organization. I have published a number of books on hospitals and medical services; a book in 1907 on dispensaries; a larger book in 1937 on clinics and hospitals and health matters; several books on the cost of medical care, public medical service, hospital administration and I have written a large number

of articles for professional and lay journals on hospital subjects, the cost of medical care, and related matters.

Hospitals are much more important today than they were sixty or seventy years ago. In 1870 the population of the United States was forty million. At that time there were approximately 50,000 hospital beds in the country. In 1940 the population was 133,000,000 and the number of hospital beds was 1,200,000. Thus, while the population grew about  $3\frac{1}{3}$  times, the number of the hospital beds increased 24 times. There were  $1\frac{1}{4}$  beds per 1,000 in 1870 and over nine beds per 1,000 in 1940. The investment in hospitals, clinics and subsidiary buildings today is between  $3\frac{1}{4}$  and  $3\frac{1}{2}$  billion dollars in the United States, with the greater bulk of that money resulting from gifts or grants either by private individuals, local and state bodies or the federal government. Approximately two-thirds of all doctors in the United States have some affiliation with a hospital. Doctors consider affiliation with hospitals very valuable and important. In surgery a hospital connection entitles the surgeon to treat and operate on his patient, which is practically essential to the conduct of his practice. General hospitals treat any kind of illness brought to them, whereas special hospitals take only special cases. Hospital finances and ownership usually are invested in a lay board of trustees, which is sometimes the governing body of a church, and holds title to its property, is responsible for finances and the business management of the institution. It appoints the medical staff, who do the actual medical, professional work of the hospital. The typical American hospital is run in friendly cooperation with the medical staff, composed of the doctors appointed by the lay board, without interfering with the doctors. The medical staff, that is the regular or attending staff, contains not only physicians and surgeons who are appointed as individuals and who are given the privilege of treating patients, but it is also an organization of physicians required by national professional standards to provide medical care. Thus, the attending staff has its own organization, a governing body for its own professional work and through that body studies and controls the professional standards of the hospital, subject to the oversight of the lay body, which has the legal control of the property of the institution. A wise lay board does not interfere with the professional work in the hospital. That is a

matter which is and probably should be left to the members of the medical profession.

Charity work for hospital patients is treated free by physicians and is controlled by the governing board, who must decide how much charity work can be done. The professional staff give each a part of their time to caring for free patients in the wards. The out patient department of the hospital is for people who are able to be up and about and come to the institution for care without going to bed, and is supervised by the lay board in general, but actually controlled and managed by the physicians who are in the clinic of the hospital and do the actual work. In some instances the regular staff of the hospital are paid salaries, but as a rule they are not, receiving their remuneration by having private practice in the hospital without being paid by the hospital in most instances. If the medical staff is paid, they are paid by the hospital, but that is in the minority of cases. The attending physician or surgeon who carries on private practice is paid directly by the patient and by private arrangement between the patient and physician. Membership on the regular staff of the hospital is of much value to the doctor, because it gives him definite prestige and helps his practice. Connection with a hospital is regarded in the medical profession and by a large portion of the public as a sign of good standing. A physician who is a member of a regular staff of a good hospital has a definite prestige as a result.

Many hospitals have in addition to their regular staffs, courtesy staffs. A courtesy staff is composed of those physicians who are given the privilege of treating their patients in the hospital under certain restrictions laid down, who are not members of the hospital organization and do not share in the professional responsibility and standards of the hospital. Members of the courtesy staffs are invited to staff meetings in which disease problems and cases are discussed for the benefit of the doctor who enjoys the courtesy privileges. In appointing doctors to the courtesy staff, the regular staff usually, through a staff committee, nominates or advises the lay board as to the physicians who should be appointed to the courtesy staff and the lay body usually follows the recommendations of the medical staff, as they appreciate the qualifications of a physician can be best determined by other physicians who

act responsibly for the lay board. Excluding emergency cases, by and large, no doctor can use hospital facilities in the United States except as a member of the regular or courtesy staff of a hospital, though there are some exceptions.

The AMA inspects a certain number of hospitals to determine whether they should be approved to receive interns for training. The American College of Surgeons inspects hospitals and has an approved list of hospitals that have passed its inspection and have met its standards. There are various other bodies which in other states, under state law, inspect hospitals, and some of the nursing bodies in some states inspect hospitals to determine whether they are of the proper standard to train nurses. The AMA publishes a list of registered hospitals which, on the whole, is the most complete and authoritative list of hospitals we have. A hospital not on the registered list of the AMA is definitely regarded, as a rule, as suffering from the exclusion and is generally regarded as being inferior to hospitals that are on the list. The size of a hospital does not bear on the inclusion in the list, though it does bear on the list for approval for training interns.

An intern is a physician who has just graduated from medical school and is taking one or more years' training in hospital work in continuation of his training. In a hospital he has opportunity to work with sick people under the direction of the staff, and internship is regarded as an essential part of the doctor's training, and, in some states is a legal requirement to professional status. A resident is one working in a hospital who is further along and is working in a specialty, such as surgery. A good many hospitals pay interns nominal sums, ranging from \$15 to \$25 a month, but a good many of them do not pay anything at all, as the training is such that he who seeks it gets little or no compensation, though he is given his lodging and maintenance while in the hospital. The hospital gains a certain amount of actual services in caring for sick people from the intern, as he is an unpaid and a very hard worker during his internship. A hospital gains a certain amount of prestige as being regarded as sufficiently good to train interns. The AMA considers the size of a hospital in passing upon the approval of a hospital for the training of interns, and the general standards



are that a hospital which has as many as 100 beds and 75 patients, with some exceptions, is deemed sufficiently large to give training to an intern. AMA approval for training interns is extremely important to a hospital. A hospital which does not have that approval will generally find it impossible to obtain young men who are willing to go there and work as interns. Thus, if a hospital wishes interns, and most hospitals wish to have interns, it is extremely important that they have approval. If a hospital would lose its approval for receiving interns, it could no longer get interns and would lose the services of these young men. If the hospital were to continue the same quality of service to the patients, it would have to employ them on a salary, that is employ young medical men to do the intern work which the interns would do if they were there, so there would be a substantial loss to the hospital if approval were taken away. The hospital also loses prestige. Physicians on the regular staff would feel that the hospital had suffered and some of them might be inclined to shift their patients to other hospitals.

The young medical man is keen to get the best training and seeks an internship where he will not only get good training but will also get a good standing in the profession, and, if he has had an internship in a hospital not up to form, it is a definite handicap to the young doctor. The mere fact that the hospital is not on the approved list is going to be a handicap.

I was a member of a committee on costs of medical care. It was organized in 1927 to make a thorough national study of the cost of medical care and related subjects, with the aim of trying to improve the situation. Its Chairman was Dr. Ray Lyman Wilbur, President of Stanford University, former Secretary of the Interior, and a past-President of the American Medical Association. The committee was formed of fifty members and ended with forty-eight. Of the forty-eight members twenty-five were doctors of whom fourteen were engaged in private practice. Some of the doctors were Dr. Walter Bowers of Boston; Dr. Roger Smith, a pediatrician; Dr. Stuart Roberts, Atlanta; Dr. George Follansbee of Cleveland; Dr. Steiner of Connecticut. Several men engaged in public health work, not physicians; several physicians engaged in public health work, such as Professor Winslow of Yale; several sociologists and



economists, such as Professor Ogburn of the University of Chicago; and Professor Mitchell of Columbia University; three dentists; two nurses, two or three men connected with the drug business; and men of general public interest were also on the committee. Dr. Olin West and Dr. Christie were on the committee.

The committee made a series of studies of the amount of service, cost of service, and published reports of its findings, and made recommendations as to what should be done to make medical care more available. One study was made of 9,000 families in all parts of the United States to find out the amount of sickness and what it cost them. Each family was visited approximately every six weeks or two months throughout a year by a trained person, who found out the general facts concerning sickness and its cost. The committee made studies of medical care in certain communities. It studied medical care in Philadelphia and Detroit, and in some rural areas in the south and a county in Indiana and a county in California. It studied the incomes of physicians and dentists. Finally, the committee made a study of new plans of medical care, including some prepayment plans where the employees of a large corporation get service and pay for it on a weekly pay roll deduction basis. It studied medical plans of universities for students, the medical care of the Army at one of the large Army posts. The committee had an executive committee of 8 persons which supervised every study. Technical people carried on the details supervised by the executive committee, which planned the studies with the staff and which read and criticized the material as it came in from the field. I was a member of the executive committee and Professor Charles Edward Winslow was Chairman. The 9,000 families I mentioned were selected in communities of different sizes to represent all types of income groups. The families were classified by income as under 1,200; under 2,000; 2,000 to 3,000; 3,000 to 5,000; 5,000 to 10,000; and 10,000 or over. Approximately 38,000 individuals were involved in these 9,000 families.

Q. What conclusions did the committee reach from the studies of 9,000 families which you have described concerning the relation between the amount of medical care received by the families studied and their incomes?

The defendants objected on the grounds that the question called for conclusions of a purely private committee, a voluntary group which had made a study of what they thought would be a representative group of American citizens, that is, a mere 38,000 out of a population of 130,000,000; that this committee is not qualified to give the conclusions called for; that the answer would be hearsay as to every other member of the committee and if the opinions of the members were to be shown they should be shown by each member, and not by this witness; that the report is incompetent, irrelevant and immaterial, particularly as it does not concern medical care and medical costs in the District of Columbia and is too remote. These objections were overruled and exception was allowed.

A. Well, roughly, the more income families had the more medical care they received. I can illustrate that.

We can measure the medical care in terms of the number of visits from or to a physician during the course of a year.

The figures are somewhat like this.

That for families of income under twelve hundred a year it showed an average of 1.9 visits from or to a physician during the course of a year.

The number of calls or visits from or to a physician increased with each increase in income, until at the top level families of income of ten thousand and over received 4.7 visits from or to a physician during the course of a year. So there was a steady progression.

By the Court:

Q. That is for the family and not the individual?

A. No. That is for the individual.

Another way of measuring the amount of care, of course, is in relation to hospitalization.

The average amount of hospitalization is measured in terms of the hospital days; that is, a person who goes to a hospital and spends one day there, that is recorded as a unit of hospital service, one patient-day's care.

Now, in that unit we found a very interesting and surprising thing with families of the lowest income, some of whom were on relief.

The average amount of care received by an individual in a hospital during a year was nine-tenths of a hospital day; a little less than one day's care.

When we moved to the next group, twelve hundred, the amount of hospital care dropped to about .66; that is about two-thirds of a hospital day instead of nine-tenths.

Then, after that, in general, the amount of hospital care received rises with income, reaching about 1.2 hospital days' care for the families of incomes of ten thousand and more; hospital day's care for the person in that group.

By Mr. Kelleher:

Q. That 1.2 days for families with incomes of ten thousand or over is to be compared with how many, of the families with incomes between twelve hundred and two thousand?

A. About two-thirds of a day. It is not quite double the amount.

Q. Did the study show anything concerning the percentage of families in the various groups receiving no income whatever—receiving no medical care whatever, excuse me.

A. Yes, there were a substantial number of families, not quite half the total number, of individuals, who received no medical care.

Of course it is clear that there are two reasons for that. One is that they are not sick. The other is that they were sick but didn't get care.

So the percentage of persons not receiving care throughout the year was about 47 per cent of the total number of persons.

That percentage, however, was less among people with larger incomes than among people with smaller incomes, so there again was a shift as we went up in the income scale, the proportion of people who received no care, medical care, during the year, grew less, substantially less.

Among the highest income group only about one person in seven went without any medical care during the year; whereas, of the lowest income group about half went without any care.

Q. Is there any reason why people in the low income groups should have less illness than in the high income groups?

A. No.

In addition to the general objections, the defendants objected on the further ground that no qualifications had been shown in the witness as an expert able to answer such

a question. These objections were over-ruled and exception allowed.

Q. Did the study consider whether there was any reason why there should be less sickness in the low income groups than in the high income groups?

A. This study did not make a particular investigation of that point.

Q. Have you made any investigation of that point?

A. I have not personally. I am familiar with studies which I regard as authoritative which have made investigations of that point.

Q. What have those studies shown?

Mr. Leahy. Let us see what the studies showed.

By Mr. Kelleher:

Q. What are the studies?

A. After the committee on medical care a number of additional studies have been made.

For example, several studies conducted by the Milbank memorial fund entitled "Health and the Depression;" then another study conducted in 1935 and 1936 by the Government through the United States Public Health Service, usually called the National Health Service.

Those studies led to certain conclusions on the matter you have asked me. I regard those studies as authoritative.

Q. What conclusions did those studies reach?

A. They reached the conclusion that there was more sickness generally among people of small income than among people in comfortable circumstances.

The difference isn't as great as the difference in income, but on the whole, people in the smaller income groups have more sickness; as shown by these studies.

Q. Dr. Davis, what did the study show concerning the financial burden for medical care as between two or more families in the same income group?

A. The study of these 9,000 families led to the conclusion, which we all knew in advance, that sickness falls unevenly, and, its cost likewise.

It did, however, give us some figures showing how uneven the burden does fall.

We get quite a few figures. For instance, in the income group of between twelve hundred and two thousand a year, about 5, a little more than 5 per cent of the families, had

relatively large sickness bills running through—in the year, running to a total of \$250 or more; and that 5 and a fraction over per cent of the families had spent for sickness 32 per cent of the total amount spent by all the families.

If we compare that with the families who had little sickness and low costs therefor, we find that almost 70 per cent of the families spent about 24 per cent of the total; whereas, a little over 5 per cent of the families spent 32 per cent of the total.

So that a relatively heavy burden falls on a small proportion of the families; who, of course, cannot predict in advance whether they are going to be the lucky or unlucky ones in most of the cases.

Q. Will you give us some figures to show the burden borne by relative percentages of all the families studied?

A. If we take all the families together, all income groups, the figures are very striking.

About 10 per cent of all the families bear about 41 per cent of the total burden of sickness costs during the year.

On the other hand, 58 per cent of the families bore only 18 per cent of the burden.

A large number bore a small burden and a small proportion bore a heavy burden.

Q. Dr. Davis, did the committee make any recommendations?

A. Yes. The committee made a number of recommendations, the committee making a main report signed by 35 of its members, and a minority several minority reports with differing recommendations being made.

The committee was not unanimous in its recommendations.

There was no criticism of the study in the minority report but the recommendation for action differed.

The 35 members endorsing the majority report included 17 physicians, 9 of whom are in private practice. The main recommendations of the majority were to develop the medical care on a group prepayment basis, preferably in association with group medical practice. Those were its two main recommendations. The main minority report criticized group payment as tending towards undesirable contract practice and various evils and criticized group medical practice. The minority report was endorsed by the defendants Dr. West and Dr. Christie. The reports of the com-



mittee on the cost of medical care were all published, and filled 28 volumes of text. The recommendations fill one volume and the studies fill the remainder. The final report is a small volume which includes the recommendations of the majority and of the minorities, and is called "Medical Care for the American People," and was published at the end of 1932.

Witness excused.

Gov. Ex. 102, portions of the proceedings of the House of Delegates of the AMA of 1933, pages 21, 51, 55 and 59, was offered in evidence. Gov. Ex. 102 was received in evidence and read from to jury as follows:

**"Resolutions from Constituent State Medical Associations Requesting National Medical Organizations to Declare Opinions on Medical Practice through Approved Channels"**

The following resolution adopted by the board of trustees of the Medical Society of the State of Pennsylvania, has been transmitted to this Board:

Whereas, There have been formed important national organizations of physicians, specialists, other than the American Medical Association, and

Whereas, Such organizations fundamentally formed for scientific purposes have from time to time publicly expressed opinions concerning the entire practice of medicine, especially in its social and economic relationships, and

Whereas, An unusual emphasis on the social and economic position of medical practice has recently been precipitated by the published report of the national committee known as the Committee on the Costs of Medical Care; be it

Resolved, That, in the interest of the welfare of the public and the maintenance of the most serviceable form of medical practice, the proper representatives of the American Medical Association request other national medical organizations whose qualifications for membership include membership in the American Medical Association to declare publicly their opinions on general social, legislative, and economic relationships of medical practice only through approved channels of the American Medical Association. To this end the Board of Trustees of the Medical Society of the State of Pennsylvania pledges its own efforts and influences to bring about this most desirable point of view

in the minds of the members of the Medical Society of the State of Pennsylvania, who are also members or Fellows of the other organizations referred to. They also respectfully request the Board of Trustees of the American Medical Association to bend every effort to accomplish this purpose throughout the Association at the earliest possible moment in order that the same evolutionary progress of medical practice may not be disturbed by social experiments which endanger the health and the welfare of our citizenship, and which have proved a pernicious health influence in other nations.

A similar resolution adopted by the council of the State Medical Society of Wisconsin has also been submitted. (52) (55) "

Mr. Kelleher: The proceedings show that the resolution was adopted.

#### "Resolutions Endorsing Minority Report of Committee on the Costs of Medical Care

Dr. Henry C. Macatee, District of Columbia, presented the following resolutions, which were referred to the Reference Committee on Legislation and Public Relations:

Whereas, The Medical Society of the District of Columbia has endorsed the Minority Report of the Committee on the Costs of Medical Care, and has undertaken to engage in an intensive campaign to educate and inform its constituency regarding the socio-economic aspects of medical practice, with a view to the maintenance of high ethical standards and the preservation of professional ideals;

(a) By the dissemination of literature;

(b) By the organization of a speakers' bureau for the purpose of presenting various aspects of the subject to the membership;

(c) By the organization and conduct of study groups, and

(d) By the employment of such other means as may from time to time be deemed expedient for that purpose, and

Whereas, The Medical Society of the District of Columbia has by resolution instructed its delegate to endeavor to secure the support of the American Medical Association both of the Minority Report of the Committee on the Costs of Medical Care, and of the society's plan for promoting harmony of professional opinion and action on the socio-economic aspects of the practice of medicine;

Resolved, That the House of Delegates of the American Medical Association endorses the Minority Report of the Committee on the Costs of Medical Care as expressive, in principle, of the collective opinion of the medical profession; and, in order to clarify and harmonize the thinking of the individual members of the profession on the general subject of the said report, and on allied subjects.

Resolved, That the Board of Trustees be requested to undertake 'the sponsorship, direction and active participation by the American Medical Association in an intensive campaign to be conducted in cooperation with its constituent bodies for the purpose and along the lines indicated' in the first paragraph of the preamble to this resolution. (58) (59)''

Mr. Kelleher: The subsequent portions of the proceedings show that that resolution was adopted by the House of Delegates.

JOHN DONALD LAUX, a witness for the United States.

Direct examination.

By Mr. Kelleher:

From 1934 to 1939 I was assistant to Dr. Leland in the Bureau of Medical Economics of the AMA. Dr. Leland is Director of Medical Economics. I am not a doctor. I was a research assistant and had charge of studies in subjects such as insurance problems and various problems in medical economics, group hospitalization and handled correspondence concerning those matters. I studied plans involving group practice on a prepayment basis as part of our studies of medical service plans. I answered inquiries about types of medical service plans. I worked directly under Dr. Leland. I wrote Gov. Ex. 85. I cannot say whether I had conferred with Dr. Leland before Gov. Ex. 85 was made, but I do believe that the general contents of the letter—we had discussed types of replies of this nature as to the general content of the letter. I was an employee in Dr. Leland's office. I believe that the contents of the letter are generally from the results of studies we had made, and most of those studies were conducted fairly independently. I would not want to be certain that the contents of Gov. Ex. 85 were

approved by Dr. Leland, because he is a very vigorous taskmaster. Whether he would agree with every one of the statements, I would not say; but I think the general content was in accord with our conclusions as to the types of medical service plans. I don't know that he would agree with each one of the statements made. I would say that he would tend to agree with the general implications of the letter; yes. Whether with the specific statements in the letter or not I do not know. I cannot recall an instance of that kind so far back. That would be the general type of letter. Dr. Leland was generally familiar with the general type of letter we were sending out.

Gov. Ex. 88 is a copy of a letter I wrote. I don't believe this letter came to the attention of Dr. Leland or anyone of the officers of the AMA. We received quite a volume of letters of this type, some 3,000 or 4,000 a year and my recollection of this letter would be that it probably was not discussed with Dr. Leland. Replies to letters of this sort were left largely up to Mr. Simons and myself to answer. After having written several hundred of these letters, Dr. Leland thought I could handle the answers, and that while he might not have been familiar with the language, he was familiar with its general implications.

Gov. Exs. 89, 91, 92, 93, 94, 95, 96, 99, and 101 are copies of letters I wrote and they were all handled in a fashion similar to Gov. Exs. 85 and 88. The reference in Gov. Ex. 92 refers to the plans in the State of Washington.

Gov. Exs. 85, 88, 89, 91, 92, 93, 94, 95, 96, 99 and 101 were offered in evidence against the AMA only.

The defendants objected on the grounds that they were incompetent, irrelevant, immaterial, and that the witness' authority to speak for the AMA was not shown, as the evidence showed that the official voice of the AMA is the House of Delegates. These objections were overruled and exception was noted.

Gov. Exs. 85, 88, 89, 91, 92, 93, 94, 95, 96, 99 and 101 were received in evidence.

Cross-examination.

By Mr. Leahy:

I am working as Director of the Michigan Medical Service Plan, a prepayment medical service plan sponsored

by the Michigan State Medical Society, a constituent member of the AMA. I was employed for 4½ years in Dr. Leland's office and when letters of inquiry were received by me I did the best I could to answer them. Inquiries about medical service plans alone would number 1,000 letters a year. The letters I identified are but an extremely small portion of letters I wrote. In only a very few instances was there any collaboration with Dr. Leland and that usually occurred when some particular type of information was asked for, for which we had not theretofore had an inquiry. The Bureau of Medical Economics, in which I worked, collected information about medical plans all over the United States and its incoming mail was in excess of 5,000 pieces a year, requiring 5,000 answers a year. The Bureau conducted studies on various economic problems and plans by questionnaire, by personal investigation and by information sent in by physicians. A library on the economics of medicine has been collected, including various plans, prepared reports, and we publish a brochure on these topics. The report referred to in Gov. Ex. 101 was prepared in the Bureau interpreting the principles of ethics of the medical profession in view of the economic problems which the profession faced, and indicating why adherence to such ethics was necessary, and their purpose. The medical service plan referred to as being enclosed with Gov. Ex. 101 was a study of the various types of prepayment and postpayment plans, with synopsis. There are in excess of 4,000 prepayment and postpayment plans throughout the country. In the years I was at the Bureau there were 35 reports, separate booklets, distributed to doctors as well as being contained in the pamphlet "Hygiene". A recent report of the Bureau deals with the various new types of development of prepaying medical service. This report analyzes all types of medical plans in existence in the country in order to help persons to obtain medical service through prepayment or postpayment plans or with the assistance obtained from Government agencies.

The letters I have identified and the reports which were prepared by the Bureau were always with the intention of conveying the facts in an endeavor to give an inquiring person accurate information, either adverse or favorable concerning the type of plan to which the inquiry related. I, throughout my work in Dr. Leland's office, endeavored to give accurate information in response to letters that



came to me for answer. My authority while I worked in the office of Dr. Leland was merely to answer these requests for information. I had no authority to declare policies for Dr. Leland's office as policies were decided upon by the House of Delegates and the Board of Trustees of the AMA, and, because of this situation, as frequent requests would be received for information about types and plans which had not yet been brought before the House of Delegates, it was necessary to say that this information is given which you request and is confidential. We would further advise the inquirers that until there had been received a full report concerning the plan and it had been acted upon by the House of Delegates, we were unable to take any official position with reference to the plan or type of practice, and would say in concluding, opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for the information herein given. A representative of the Department of Justice went through our files and took out the letters he thought were of interest to him. In  $4\frac{1}{2}$  years at the Bureau I wrote about eight or ten thousand letters.

#### Redirect examination:

The prepayment plan with which I am now associated commenced in March, 1940.

Q. In so far as the letters which have been offered through you criticize a particular plan, does that criticism expressed in these letters reflect the policy of the American Medical Association?

A. The criticisms on the particular plans mentioned in those letters was in accordance with the policies advanced by the American Medical Association.

#### Recross-examination.

Q. Let me be specific: let us take 89, which we had before. Wherever there is any expression of opinion contained in the letter is that expression given in accordance with what you stated in this letter of November 30th, 1937; that the opinion was given merely as a business courtesy?

A. Yes, the endeavor was to give to the inquirer the facts as we had them in our files, that is about the particular type

of medical plan. There was no particular reason other than that to give them the information as to what the plan was. If they asked whether such a plan was operating satisfactorily we tried to give them the information as we had obtained it through investigations or other information or data received through the members, or otherwise; often from those engaged in the plan or from members in the locality.

Q. Now, you stated on the second page of your letter—the first page is an outline of the medical service plan at Trinity Hospital at Little Rock, Arkansas, is it not?

A. Yes.

Q. Now, where did you get your information about that?

A. We had a rather complete report of some 48 pages made by an investigator who was there to study the plan.

Group Health Association, Inc., at Washington: "The enclosed article prepared by Dr. Woodward, would probably give the information you want. As you know this Association was discussed rather extensively at the Secretary's Conference" and the Hospital Guild, where did you get that? The Economy; and the Bassett; the Thompson Benefit Association, Brattleboro, Vermont: Where did you get your information about those?

A. The Bassett Plan published a report on its experience over a period of three or four years. In addition we have considerable correspondence pertaining to it. The Economy was a rural medical plan; we had a number of pieces of correspondence from the doctor who was formerly in charge of that plan, and from others in the Society. The Thompson Benefit Association, Brattleboro, was a hospital service and a surgical insurance plan; they published a number of, two or three reports, over those years that we had received.

Q. And is that what you enclosed when you stated, "The enclosed outline of those plans" was going forward?

A. Yes, that was a kind of synopsis of the plans and reports which we prepared to make the information more readily available to the inquiring person.

Q. And you added, "There are several other plans of a similar type, but as a general rule they do not provide the complete services claimed nor are they solely supported by dues collected from the members."

A number of independent services have agreed that medical services cost an average of not less than \$100 per family, or \$25 per person. It is inconceivable that any

insurance or prepayment plan can provide the same services for lower average charges. Either the services are not as complete or the quality of the services is impaired. Frequently the members who ask for service are given the complete run of the mill which always entails special charges for special services. It is also not uncommon to find that dues and special charges are insufficient to support the plan and that the deficits are made up from profits derived from extra activities, such as soda fountain, magazines, or direct sales.

Income from non-members is also an important financial item.

This information is given which you request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for the information we have given."

Were those comments based upon service reports you had, and which were read and studied by you?

A. Yes, they were an analytical study of those plans.

Q. Are those comments, whether critical or otherwise, based upon what those studies show?

A. They were based upon studies of these plans.

Q. And do you think that while you were there that you studied plans for the distribution of medical care which would run up into the thousands?

A. Yes, that is certainly true.

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HATTIE A. NIEHOFF, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have been employed by the AMA for 27 years. During the last 10 years I have been secretary to Dr. West, the Secretary and General Manager of the AMA. I know his signature. I at times wrote letters and signed them for Dr. West. I think I was authorized to sign Dr. West's name when I did. I think I typed Gov. Exs. 103, 105, 109, 110, 112, 113, 114, 115, 117, 118, 119, 120, 125, 123, 126, 128, 129, 132, 133, 138, 141, 143, 144 and 145. I usually took notes of the minutes of the proceedings of the Judicial

Council. Gov. Ex. 134 is a photostatic copy of the minutes of the Judicial Council of June 6-10, 1937. Gov. Ex. 135 is a photostatic copy of minutes of the Board of Trustees of the AMA of June 29, 1937. Gov. Ex. 136 is photostatic copy of the minutes of the Board of Trustees of the AMA dated November 18-19, 1938. Gov. Ex. 137 is a photostatic copy of the minutes of the Judicial Council of November 12, 1937. Gov. Ex. 145 appears to be an opinion of the Judicial Council of AMA, dated October 19, 1932, in the case of Dr. A. L. Curtin and others. Dr. O'Shea, Dr. Donalson, Dr. Cuniffe, Dr. Follansbee are members of the Judicial Council. Gov. Ex. 117 is an account of a conference held at the AMA office on November 6, 1937, on which I took notes and which I typed. I am no court reporter, so I cannot say I took word for word.

Gov. Exs. 103, 105, 109, 110, 112, 113, 114, 115, 117, 118, 119, 120, 125, 123, 126, 128, 129, 132 and 133 were received in evidence against the AMA and the writers at this time.

Government counsel also offered Gov. Exs. 104, 106, 108, 111, 116, 121, 122, 124, 130, 131, 134, 135, 136, 137, 138, 141, 142, 143, 144 and 145 in evidence. Defendants objected as immaterial, incompetent, irrelevant and too remote. Objection overruled and exception allowed.

Gov. Exs. 104, 106, 108, 111, 116, 124, 127, 134, 135, 136, and 137 were received in evidence against the AMA at this time.

The court at the request of defense counsel reserved ruling upon Gov. Exs. 121, 122, 130, 131, 140, 142, 144, and 145 on defendants' pending objection.

Mr. Richardson: We had some doubt as to whether the record is sufficiently clear that the testimony which is being admitted under the background is being objected to regularly; that is, whether our objections appear in the record.

The Court: You mean to all of this?

Mr. Richardson: I wonder whether it wouldn't be better to make a definite objection and then the Court may overrule the objection, with our exception understood.

The Court: What is the basic ground?

Mr. Richardson: The defendants object to the testimony in this case with respect to transactions by the American Medical Association having relation to other plans and attempts at so-called group practice, upon the grounds that

the same are other than GHA; incompetent, irrelevant, and immaterial in this case; too remote in time and are not identified as relating to plans and methods of medical practice which embrace the same or similar facts and circumstances as that charged in the indictment, with respect to the conspiracy there charged.

Mr. Leahy: May I also add that for the benefit of the Court of Appeals: I understand that the allegations as to background have been held admissible and proper by the Court of Appeals on the authority of the Chicago Board of Trade case. May we add to our objection that there is this distinction between the proof which the Government offers here and that which was received in the Chicago Board of Trade case. That distinction is this: That in the Chicago Board of Trade case that the practice was in the Chicago Board of Trade related solely and entirely to the particular provisions which the Board later adopted as its rule. In this case the Government is not restricting the attitude of the American Medical Association towards GHA, but is going into other transactions which constitute clearly *res inter alios*; and, furthermore, that whatever the American Medical Association may have done outside of the District of Columbia, it was perfectly proper for it so to do, because it was perfectly legal.

The Court: Let me ask you: My recollection is that the background is general in its terms. It doesn't relate only to GHA; it relates generally to opposition to group health plans; and, secondly, that the Court of Appeals has upheld such a recital in the indictment.

Mr. Richardson: Seemingly so.

The Court: So I have nothing to do, you see.

Mr. Richardson: Will you in ruling upon this objection add to your ruling that we may have an exception?

The Court: It will generally prevail without repeating it on that basic ground. Of course, if you have additional grounds you ought to state them, in any particular case.

Mr. Leahy: Could I just state one more objection: Last night I read over the photostats which you stated you were going to introduce this morning. Some of those come from various officials of the AMA. Now, we don't have any objection to the letter being introduced against the writer of the letter, but our objection is that it ought not be introduced against the American Medical Association; and could our objection run to that?



The Court: You mean in every instance?

Mr. Leahy: Yes.

The Court: Well, if you want to make that a general objection I see no reason for taking up time repeating it on every occasion.

Mr. Leahy: Well, then, I won't make specific objections every time.

Defense counsel admitted the authenticity of Gov. Exs. 147, 149, 150 and 151 for identification. Gov. Exs. 147, 148, 149, 150, and 151 for identification were offered in evidence. The Court reserved ruling on defendants' general objection.

Gov. Exs. 152, 153, 154, 155, 157, 159, 161, 162, 165, 166 and 167 for identification were identified and offered in evidence. Gov. Exs. 158 and 156 for identification were offered in evidence. The Court reserved ruling on defendants' general objection.

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A. N. SIMONS, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have worked since 1932 in the Bureau of Medical Economics under Dr. Leland. It is part of my duty to receive incoming letters on medical economics and to prepare and send answers on behalf of the AMA.

Gov. Exs.<sup>5</sup> 169 to 176, inclusive, were offered in evidence. Defendants objected on the general grounds that the documents were incompetent, irrelevant, immaterial, hearsay and not admissible as no conspiracy had been proven.<sup>5</sup> No objections were interposed as to their authenticity and genuineness. The Court reserved ruling on defendants' general objection.

Cross-examination.

By Mr. Leahy:

My duties were largely research work, but a certain amount of correspondence was handled also. The research

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<sup>5</sup> This objection when used refers to the objection detailed on pages 223, 228-240, supra.

work dealt with various problems in medical economics and factual studies, covering the entire United States. I consulted with other workers in the Bureau. In 1937 and 1938, four or five were engaged in studying various matters of medical economics. When letters of inquiry came in, I responded, giving the requested information to the general public and to the profession. I handled three or four inquiries a day.

#### Redirect examination.

I discussed my reports with Dr. Leland. In my correspondence I endeavored to express the policies of the AMA as I understood it.

#### Recross-examination.

No one had authority to make policies for the AMA except the House of Delegates. The reports I discussed went to Dr. Leland for review and such modifications, changes or additions as Dr. Leland saw fit were made. When letters of inquiry came to me for reply I did not often discuss the replies with Dr. Leland. It was impossible for him to review every reply or even read every letter of inquiry received in the Bureau of Medical Economics.

#### Redirect examination.

When I expressed opinions in those letters I made them conform with what I believed to be the policies of the AMA, from my discussions with Dr. Leland and my reading of the proceedings of the House of Delegates.

At the suggestion of the Court and with the agreement of counsel ruling on all documents identified by secretaries and stenographers of the AMA would be reserved, except objections as to identification and authenticity. Pursuant to this agreement numerous witnesses were called who identified and authenticated the following. Gov. Exs. 177 to 196, 198 to 291, inclusive, and Gov. Ex. 291A. Defense counsel admitted their authenticity and waived all questions of formal proof, except as to Gov. Ex. 197. Government counsel offered in evidence Gov. Exs. 177 to 291A, inclusive, except Gov. Exs. 218, 219, 220, 221 and 222.

The following exhibits were offered and received in evidence but not read to jury over the objections and exceptions

of the defendants that the documents in question generally antedate the commencement of the conspiracy, and relate to matters entirely distinct from the conspiracy alleged and are not shown to be the official action of the AMA and express, in the main, personal opinions of the writers that defendants are not bound by the contents of letters that others write to them, and that the admission of such letters is prejudicial, and are immaterial, incompetent, irrelevant and too remote in character to be admissible.

Gov. Exs. Nos. 264, 265, 266, 267, 268, 270, 271, 272, 273, 274, 259, 260, 276, 279, 278, 280, 277, 284, 258, 257, 282, 281, 165, 131, 291A (in lieu of 291), 166, 144, 145, 246, 254, 255, 248, 249 (except paragraph 2, to which objections were sustained), 256, 250, 251, 252, 253, 209, 210, 232, 233, 247, 244, 245, 234, 216, 217, 206, 207, 208, 211, 205, 212, 213, 214, 236, 235, 231, 237, 238, 242, 215, 243, 223, 224, 225, 226, 227, 228, 229, 177, 198, 199, 178, 200, 179, 180, 201, 187, 188, 202, 186, 181, 182, 183, 184, 185, 189, 293, 294, 190, 203, 191, 192, 195, 196, 197, 204, 152, 153, 154, 155, 156, 120, 157, 158, 159, 162, 161, 147, 148, 72, 74, 80, 81, 64, 67, 58, 59, 60, 61, 71, 77, 78, 79, 70, 172, 170, 169, 171, 174, 173, 176, 175, 122, 141, 142, and 65 were received in evidence. Gov. Ex. 269 was received in evidence without objection.

The Court reserved ruling on the following: Gov. Exs. 285, 286, 292, 193, 194, 90, 150, 151, 73, 73A, 149 and 52.

The minutes of the District Medical Society, being Gov. Exs. 36, 37, and 38, portions of which heretofore had been offered in evidence against the defendants, were objected to by the defendants as being incompetent, irrelevant and immaterial, not properly authenticated, and if admissible at all, they have not been proven relevant and if any portions of the minutes are admissible, it is only those portions which reflect official action of the Society, all other matters being irrelevant, incompetent, immaterial and hearsay; that the official actions fail to show a criminal conspiracy as each and every act therein recited is lawful; that statements of third persons, not conspirators contained in the minutes, are incompetent, irrelevant, immaterial and hearsay; that until a conspiracy is proven by evidence aliunde, the minutes are inadmissible; and that the admission of the minutes violated the constitutional rights of freedom of speech of the defendants and amount to peaceful persuasion and lawful argument.

Whereupon the Court overruled these objections and ruled as follows:

The Court: I have reached some conclusions on this matter. I realize it is a question of real importance. I want to be right about it. In the very nature of things these are questions which the trial judge must dispose of and not let them hang fire and delay the trial of the case.

First, as to whether or not the proof is sufficient to render these minutes admissible under any circumstances, I think it is. I don't go into any reasons for that; they appear in the evidence, and, it seems to me, that *prima facie* they are sufficiently authenticated as minutes to make them admissible.

Second, if they are admissible what part is admissible? That brings up to consideration Section 695 of the 28 U. S. Code, which has been referred to. The statute is not altogether new to me. I have had to deal with that at other times in recent years. Its terms are very broad, because it says,

"Any writing or record made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence or event," et cetera.

The statute refers to the act or transaction, makes the record evidence of that act or transaction, not of the minutes or the making of the minutes but of the particular act or transaction which, in the particular case, may be in issue, may be a relevant fact.

So that it seems to me there can be no question that the minutes, so far as they relate to the formal actions of the corporation fall within the operation of the statute.

Then the question arises whether they go beyond that and encompass those parts of the minutes which refer to incidents and details that lead up to the formal action, or relate to the formal action, having relationship and relevancy to the formal action. In other words, if the action, evidence of which is contained in the offer here—adoption of a motion or resolution—is admissible, as I said they are, then, if that resolution or motion is of such a nature as that in the particular case, it becomes pertinent to dissect it and to ascertain the incidents that have led up to it, then I think it, too, is admissible.

So it would seem to me that any of the minutes which may tend to show any conduct or statements, declarations, on the part of any defendant, who may have participated in the discussion of those matters leading up to these formal actions, would be admissible.

If the minutes, as has been stated, do contain such details, I have no doubt they are admissible.

Now, I think from what I have said it is apparent that formal actions, that the minutes which relate to formal actions of the corporation certainly and concededly would be a record of proceedings within the meaning of the constitutional provision for keeping the minutes.

Defendants wish that term "proceedings" to be limited in a narrow way to these formal actions of the corporation. I am rather inclined to think the term should take a broader meaning, a more natural meaning; and I am led to believe that should be so not only because it seems to me in the use of the word it gives it such a narrow meaning, but because the practice and custom of the association itself in the keeping of the minutes have interpreted it uniformly in a broader way. As I understand it, the minutes have been kept in a way to encompass more than the mere naked statement of the formal action of the corporation itself.

We know that minutes are kept in two different ways; at times in a very narrow, restricted style, by a very naked statement of the ultimate things that are done rather than the incidents which lead up to it, while other secretaries in keeping minutes do it in a way to reflect more than that.

Here the uniform practice apparently, so far as I understand, has been in the way to include in those minutes the part of the record, the history, the historical background, and record of that corporation; these incidents that have led up to the formal action of the corporation.

And as to the verity of such minutes, as they relate to the facts which they purport to report, as I indicated, that goes merely to the weight, not to the admissibility of them. Of course, a stenographic transcript report would be more weighty, undoubtedly; yet that has nothing to do with the admissibility. If there were statements made by parties there which incriminated them in any wise, tend to show that they in any wise participated in this combination, participated in the formation of this alleged combination, it may be proved in different ways; merely by the recollection of one who was there two or three years ago, drawing



on his imperfect recollection two or three years later. This lady who was on the stand here, who made the notes, could be put on and testify from her own recollection, which would necessarily be vague; yet the testimony would be admissible. Certainly these minutes made by her and, by Dr. Conklin at the time when she had only her own stenographic ability to report the substance of what was said, I say, not only that ability but also the benefit of the attention given to those minutes by the then fresh recollection of Dr. Conklin, the secretary who subscribed to their verity—these people who were acting pursuant to their duties in that regard, that is with respect to the particular work they were doing. So that I can very well see there may be some difference in the weight to be given to these things by reason of the fact that it is not a verbatim report, yet I cannot assume that the Hitchman case, the Hitchman decision, is grounded upon the theory that it was a verbatim report instead of evidence obtained in other more imperfect ways.

Now, of course, I am not unmindful of the very important aspect of the matter which has been presented as to the right of these gentlemen to indulge freely in the discussion of these matters, and freely in persuasion; and freely in doing the acts which were limited to discussion and persuasion, and yet, as I observed the other day, if these acts and declarations by any fair inference have a tendency to show an unlawful combination, then I must admit them. It is for the jury to say, after argument pro and con, whether they do prove what is alleged or whether they don't. So that is a very brief summary of my reasons, but I think the question is worthy of placing them upon the record, briefly stating what they are, so I have taken the trouble to do so. I wish I had the opportunity to write it out, but I think you will gather from what I have said my reasons in support of my ruling.

. . . . .

There is one other feature: I don't know whether I should indicate this now or later, but I haven't had an opportunity to read the minutes or analyze them carefully.

There may be parts of those minutes which would not be admissible. For instance, suppose Dr. A, who was present, presented a resolution and in the course of his discus-

sion said, he made his argument in favor of the resolution and he said, "Now Dr. Richardson is not here, but I can tell you with assurances that Dr. Richardson favors this and would support it if he were here."

Now, I don't see how a record of that kind would be admissible against Dr. Richardson. There may be some limitation, based upon the general rules of evidence, which would exclude some parts of this evidence, and perhaps it is only fair that I state that now. I am not ruling on it, but I am indicating that there is that question in the back of my mind, and I think it is only fair that counsel for the defendants should know I am still reserving that aspect of the matter in the event they make such objection.

Exception noted.

COLONEL GLENN I. JONES, a witness for the United States.

Direct examination.

By Mr. Lewin: . . .

I am a surgeon employed on a salary by the Southern Railway. From 1909 until 1936 I was in the Medical Service of the United States Army. When I retired I held the rank of Colonel. As a doctor in the Army I was paid a salary. The Medical Service of the United States Army has displayed a decided attitude toward preventive medicine in the control of sanitary and other conditions which would preclude the occurrence of epidemics of diseases, principally; study of its personnel so as to discover any evidence, any symptoms or manifestations which might suggest the presence of disease among its personnel; by periodic physical examinations and check-ups. Without question, these have value.

In the spring of 1937 I was offered the post of Medical Director of Group Health on the suggestion to Mr. Zimmerman by Surgeon General Reynolds. I was approached by Mr. Zimmerman and Mr. Penniman and asked to make a study and report to them, tell them how it might be done. The first proposition that was put up to me was how physicians might be organized to give medical attention to subscribers in an organization in the HOLC on the basis of

insurance or prepayment for medical attention. I negotiated with these gentlemen for several months.

I was later offered the post of organizing and directing the operation of the medical unit which might be organized at a salary of \$10,000 per annum. I was to organize a unit of doctors to be employed on a salary basis. No plan I offered was adopted. The organization of such a medical unit to be successful must have the best men in the profession that could be procured, and, therefore, I contacted the Medical Society to determine if I could get their support. In that connection I saw Dr. Christie, Dr. Groover and Dr. White. I told these doctors that HOLC wanted to organize a medical unit among its employees on a prepayment basis. Dr. Christie indicated his disapproval and said that the District Medical Society was opposed to it and that members of the Medical profession of the District of Columbia who might be invited to join such a unit and did join it could not expect to continue with the District Medical Society nor could we expect members of the medical profession in the District would consult with members of such a group. The other doctors to whom I talked took a similar position. Such observations made me skeptical about the success of the prepayment plan with that unit. I reported these facts back to Mr. Zimmerman and Mr. Penniman. They called a meeting of Surgeon General Rossiter of the Navy, General Cummings of the Public Health Service, General Reynolds of the Army and the Commissioner of Health, Dr. Ruhland, and a representative of the Twentieth Century Foundation. The result of the discussion at the meeting was the beginning of my withdrawal from participation in the project. I was invited and attended a meeting of the Medical Society shortly after that. Before this meeting I also attended a meeting in the office of Dr. William Gerry Morgan, which Dr. Macatee, Dr. Willson and Dr. Verbrycke also attended. I was questioned about the proposed medical project in the HOLC, and it was discussed. I expressed the opinion that the medical profession should take hold of a project somewhat like this and organize it and lead it. No decision was reached at that meeting.

The meeting I attended in the Medical Society followed. I spoke at the meeting. The substance of my remarks are shown in the minutes of the meeting of June 1, 1937 (Gov.

Ex. 36), though I do not understand the portion which reads as follows: "He told them frankly that if the Medical Society of the District of Columbia disapproved their efforts that there could not be any available medical assistance that could be depended upon." After the meeting I went back to Mr. Zimmerman and Mr. Penniman and declined the medical directorship of Group Health.

Q. Did you state your reasons for doing so?

A. Yes.

Q. What were those reasons?

Mr. Leahy: To whom were they stated?

Mr. Lewin: I want to know what the reasons were.

Mr. Leahy: Ask him that.

Mr. Lewin: I have asked him that.

Mr. Leahy: I object as immaterial.

The Court: Objection overruled. (Exception noted.)

A. I gave as my reasons that—first of all, I indicated that I held the opinion individually that there was a wage group who could be better cared for if a better arrangement were made for medical attention to that group.

By Mr. Lewin:

Q. What was the better arrangement?

A. There are a number of them.

Q. Which was the one that you preferred and recommended?

A. I don't know that I had any choice of the three. I made a recommendation to them for theirs, but for a general organization to affect all people who might need medical attention I had another view.

Q. I did not ask you about that. I asked you what the plan was that you said you preferred, that you thought would help these people with a certain income. What was it?

A. I had no plan, myself. I say I had an opinion.

Q. Let us have that opinion. What was your opinion as to a plan that would help that group?

A. I had no specific plan. It was any one of three or four that I can state to you.

Q. State the one that you preferred. You had a preference, did you not, as among the three?

A. You mean, as far as myself was concerned?

Q. Yes.

A. As applied to the general public, no. As applied to the HOLC, I did.

Q. What was that?

A. To the HOLC?

Q. Yes.

A. The plan which I proposed to them that could be most effectively operated was one in which they would have—

Mr. Leahy: If your Honor please, we have gotten off the case.

Mr. Lewin: I don't think we have.

Mr. Leahy: The question was, what were his reasons for declining the directorship?

Mr. Lewin: We have another question.

Mr. Leahy: His Honor has already ruled.

The Court: Are you objecting?

Mr. Leahy: Yes, your Honor.

The Court: Objection sustained. Go back to that same question. You got off of that. The question was, What reasons did he have for declining the directorship?

The Witness: My reasons for declining the directorship were that I felt that such a project, if engaged in, should be composed of the best that could be produced in the medical profession and be guided by the people who represented the best interests in the medical profession.

By Mr. Lewin:

Q. Why did you decline? Did you find that that could not be done?

A. I felt so.

Q. You felt so?

A. Yes, definitely.

Q. Why did you feel so?

A. For obvious reasons.

Q. What were these obvious reasons?

A. That the District Medical Society or individuals in the District Medical Society had indicated their unwillingness to proceed and had indicated that they would not consult with the group, which automatically denied to the unit the best that the medical profession had to offer in the city of Washington.

I recognize the signature on a letter from Surgeon General Ireland of the Army to Dr. Cutter dated March 27, 1937,



marked Gov. Ex. 295. General Ireland had been a member of the Council on Medical Education of the AMA.

Gov. Ex. 295 was offered and received in evidence.

Q. I would like you to read that letter over to yourself. I want to ask you a question or two about it.

Did you ever state to the Surgeon General or to General Ireland the things which are attributed to you there?

Mr. Leahy: We object. I do not know what he is trying to do—impeach the letter or impeach his own witness.

Mr. Lewin: I am trying to get at the fact.

The Court: The letter is in without objection.—Under those circumstances, if Colonel Jones is familiar with it I see no objection to his being asked about any incident that relates to him or any statement which relates to him.

By Mr. Lewin:

Q. Let me read you this. It says:

“After this visit”——

Speaking of your visit——”

“with the men from the Home Owners Loan Corporation; which lasted for a period of two or three hours, Jones telephoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine.”

Did you state that to the Surgeon General?

A. I made some observations which were not as positive or direct as stated by General Ireland in connection with that, in that particular, both to General Ireland, General Reynolds and all of the members of the group, all of the generals who met with the District Medical Society collectively and individually.

Q. Did you state that in your opinion what you were asked to head was nothing but an entering wedge of the establishment of state medicine?

A. Not in those terms.

Q. Did you say that in substance?

A. I made this observation substantially as follows, that I felt the medical profession had a job to do in providing some way to take care of a prepayment plan——

Mr. Leahy: Pardon me, Colonel. I do not like to interrupt you, but I submit that that is not proper, if your Honor please.

The Court: Are you objecting to it?

Mr. Leahy: Yes, sir.

The Court: Objection sustained.

By Mr. Lewin:

Q. Did you say this? Did you say to anybody that you were dropping this plan like a hot cake, as early as March 27, 1937?

A. No.

Cross-examination.

By Mr. Leahy:

Except for four years I have spent my entire professional career in the Army, and I was paid in accordance with the rates of pay set forth in the statute to cover all officers in the Medical Corps of the U. S. Army and Navy.

The preventive medicine which I stated I was interested in means proper care as to ventilation, disposal of waste, the care of streets and grounds, the early recognition of individual cases of infectious diseases, the inspection and preservation of food, the testing and care of water supply and similar things. All reputable doctors are interested in preventive medicine, without question. I have been a member of the AMA for over a period of years. Members of the AMA have been generally and actively interested in preventive medicine.

I consulted with some friends I knew in the District Medical Society. I have known Dr. Christie 25 years, Dr. Groover over 25 years, Dr. Macatee over 30 years, Dr. Verbrycke over 30 years. I had confidence in the judgment of these men and that is the reason I went to chat with them. I considered these men as some of the outstanding physicians of the District. When I talked to the Surgeon General, I thought state medicine was concerned in the plan but Gov. Ex. 295 does not convey the thought I expressed to the Surgeon General. I also mentioned the Twentieth Century Fund was interested in supporting it. I told the Surgeon General that the District Medical Society was opposed to the plan. I did not say anything to the Surgeon General about dropping the matter. I more than likely made an observation to the effect that I did not see how this project could succeed, since it was violently opposed by the members of the District Medical Society. I

found this out within three or four days after I had first interviewed Mr. Zimmerman.

I did not know that General Ireland had written this letter. I discussed the HOLC situation with General Ireland prior to March 27, 1937. I told General Ireland that the Medical profession had a job to do in providing some way to take care of the low-wage group and to let it get out of the hands of the medical profession and into the hands of laymen who knew little about the medical side, would finally resolve itself probably into state medicine or socialized medicine. Unless a group of laymen who organized a corporation to provide medical care, were supported by the medical profession, it was an entering wedge to state medicine and that would be so unless it was controlled and managed by the medical profession. I told General Ireland that a group of laymen who could organize such a corporation as that would not be the proper parties to attempt to distribute medical care to the low-income group, as I am of the view that any attempt on the part of laymen to distribute medical care would be an entering wedge to state medicine. Dr. Christie, Dr. White, Dr. Morgan, Dr. Groover and Dr. Verbrycke expressed themselves as opposed to it, that they could not be sympathetic toward the project; that any member of the medical profession in the District of Columbia who joined it would be kicked out of the District Medical Society or lose his membership therein, and any member of the medical society in the District of Columbia who consulted with a member of the group would likewise be put out of the District Medical Society. They feared that it was, in effect, an entering wedge to state medicine. I do not think that state medicine is in the public interest.

- Redirect examination:

Q. Did you think that the plan which you were asked to head as medical director was itself an entering wedge for state medicine?

A. I think I will have to answer that my own way. You keep talking about my plan when no plan was ever adopted.

If I had been able to secure the support of the District Medical Society so I could have gotten consultants from them and members to serve under me on a salary, I would not have regarded it as an entering wedge for state medi-

cine. I think it would have been a substitute and I would not regard it as unethical. From my training I wouldn't want a layman around such an enterprise, though I would leave the collection of dues to a subordinate layman.

**Recross examination:**

The care of the sick should be under the direction and control of doctors and there should be no lay interference between doctor and patient. I wouldn't be connected with a plan which permitted such a condition. I would want the management and control, if I were the director of any scheme, with full charge of the medical care and control of the patients. No specific plan was ever adopted and I do not recollect seeing any documents.

**Further redirect examination:**

Q. Now I have a couple of questions. Isn't it true that one other plan which you suggested and which you were willing to undertake involved prepayment on the one hand and group practice on the other, under a medical director, the physicians being compensated by salary, with a centrally located clinic with hospitalization given in the private hospitals and with consultants obtained from the District Medical Society or any other private doctors?

A. That is correct?

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MR. THEODORE WIPRUD, recalled as a witness for the United States.

**Further direct examination.**

**By Mr. Lewin:**

The minutes of the Executive Committee Meetings of the Medical Society of June 6, 1938, were signed by me as Secretary. The minutes of the Medical Society Meeting of February 3, 1937, were signed by Dr. C. B. Conklin. The minutes of the meeting of the Medical Society of March 10, 1937, were signed by Dr. C. B. Conklin. The minutes of the meeting of the Medical Society of October 20, 1937, were signed by Dr. Conklin. The minutes of the meeting of February 23, 1938, were signed by Dr. Conklin. The minutes of the meetings of March 23, 1938, and April 13, 1938, were

signed by Dr. Conklin. The minutes of October 12, 1938, were signed by me.

The Government then offered the excerpts only from these five minutes, showing the approval of the minutes of previous meetings.

The minutes of the Executive Committee of March 9, 1938, the minutes of the Executive Committee of April 25, 1939, and the minutes of the Executive Committee of July 1, 1938, were signed by Dr. C. B. Conklin. The minutes of the meeting of the Executive Committee of October 24, 1938, were signed by me.

The Government offered in evidence excerpts from those four minutes only to show approval of previous minutes of the Executive Committee.

The Court reserved ruling on these offers which are portions of Gov. Exs. 36, 37 and 38.

BETTY LOUGDON, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am secretary to J. Ogle Warfield, and was his secretary in 1937 and 1938. I took dictation from him concerning correspondence between him and the various hospitals and between him and the doctors of the Hospital Committee of the Medical Society. I sent a questionnaire to the following hospitals: Emergency, Homeopathic, Providence, Sibley, Garfield, Georgetown, George Washington, Columbia, Children's and Casualty, with a letter dictated by Dr. Warfield. The questionnaires which were sent were returned with the blanks filled in. Gov. Exs. 295A through 310 inclusive are the answers to the questionnaires. Gov. Ex. 311 is a memorandum in the handwriting of Dr. Warfield. Gov. Ex. 312 headed "Committee on Hospitals, 1937 and 1938" was dictated by Dr. Warfield. A letter from Dr. J. Ogle Warfield to Dr. W. Warren Sager, Gov. Ex. 313 bears Dr. Warfield's signature. I sent a letter similar to Gov. Ex. 313 to Drs. Leon A. Martel, William H. Jenkins, Gregg C. Birdsall, Joseph Rogers Young, Dr. William B. Marbury, Jerome F. Crowley, J. P. Shearer, John A. Trinder and Jesse T. Mann,



members of the Committee on Hospitals. Gov. Exs. 314 through 321 are the replies which were received in response to the letters sent to the members of the Committee on Hospitals. The handwriting on the bottom of Gov. Ex. 322 is Dr. Warfield's. Dr. Warfield's signature is on Gov. Ex. 323. The interlineations on Gov. Ex. 324 in the first sentence of the second paragraph on the first page are in the handwriting of Dr. Warfield. Gov. Ex. 324 was dictated to me by Dr. Warfield.

Government counsel then offered Gov. Exs. 295A to 324, inclusive, in evidence.

### Cross-examination.

By Mr. Leahy:

I remember Gov. Ex. 324. I recall receiving Gov. Exs. 295A to 311, inclusive, through the mails. I do not know whose handwriting is on any of them. I typed the questionnaires. I do not recognize the typing on Gov. Ex. 304. I typed Gov. Ex. 312. I do not know the handwriting on the bottom of Gov. Ex. 313. Dr. Warfield's handwriting is on the bottom of Gov. Ex. 322, and his signature is on Gov. Ex. 323. I do not know the signatures on Gov. Exs. 321, 320, and 319. Gov. Ex. 318 is not signed. I do not know the signature on Gov. Ex. 317. I do not know the handwriting on Gov. Ex. 316.

Mr. Leahy. If your Honor please, yesterday you will recall that we brought to the attention of the Court that Exhibits 292, 293, and 294, which were offered in evidence on Monday upon the assumption that they had been identified and authenticated—we find upon looking over our records that they have never been identified or authenticated.

Now, I don't know whether they have had a chance yet to run this down.

Mr. Kelleher. Yes, we have. 292 is a copy of Verbruycke to McGovern that was found in the files of the AMA, and we offer it only to show there was a copy in the AMA.

Mr. Leahy. That wouldn't make the contents admissible.

Mr. Kelleher. It makes the contents admissible as to AMA.

Mr. Leahy. No.

Mr. Kelleher. Oh, yes.

The Court. I don't remember it.

Mr. Kelleher. 293 comes within the stipulation of the original article.

Mr. Leahy. All right.

Mr. Kelleher. 294 is a draft of the original article which was taken from the files of the AMA and bears a carbon copy of the note from Woodward to West and Fishbein. The original to West and Fishbein is already in evidence, which clearly authenticates this.

Mr. Leahy. That doesn't follow, because there are certain notations in handwriting, and surely there would be no proof and no authentication of the handwriting anywhere in the notation contained within it, so that wouldn't be admissible against anybody.

Mr. Kelleher. As I understand, the initials "O. W." appear somewhere in the draft of the article. Now did you want us to call somebody to identify that? We can do that.

The Court. Is it the handwriting you want in?

Mr. Kelleher. We want to show the draft was submitted and changes were made. It was sent, your Honor—it appears it was sent to West and Fishbein.

The Court. I think you had better identify the handwriting.

293 is settled?

Mr. Leahy. That is out. It is O. K. if it is within the stipulation, but 292 and 294 have not yet been authenticated.

Mr. Lewin. 292 will come in this morning as a report which was found in the files of the AMA.

The Court. What is it a report of?

Mr. Lewin. It is a report of the committee dealing with group health.

The Court. What is the objection to it?

Mr. Leahy. They are offering it on the theory that something that is found in the files of the AMA—

Mr. Lewin. It is written to Verbrycke.

Mr. Kelleher. What is it doing in the files?

Mr. Leahy. I don't know.

Mr. Kelleher. You can explain it away?

Mr. Leahy. No, no. It is a piece of evidence that is not admissible.

The Court. Pardon me. I wouldn't say that as a legal proposition that anything found in the files of any office

is, by that fact, knowledge. It has to go to the point. You have to show notice of some responsible officer.

Mr. Kelleher. There is evidence to show that reports of the meetings here were being sent from the officials of the DMS to AMA.

Mr. Lewin. Your Honor will remember the testimony about the stamp of Dr. Woodward. There is a stamp right on it.

The Court. Is that the letter (indicating)?

Mr. Kelleher. There is testimony he put his stamp on the letter.

Mr. Burke. Not on that letter.

The Court. When do you want to use this?

Mr. Kelleher. After we have introduced the minutes—or, read the minutes, your Honor.

The Court. Go on and read your minutes. I will look at this.

The following exhibits were read to the jury:

Gov. Ex. 248 is a carbon copy of a letter over the signature of defendant Cutter, addressed to Dr. J. I. Scarborough, Trinity Hospital, 2000 Main Street, Little Rock Arkansas, dated September 9, 1935:

"It has been reported that Trinity Hospital is engaged in contract practice of medicine.

In order that we may have reliable information on this point, will you be good enough to explain just what is the form of service in which you are engaged? Could you send me samples of your announcements and agreements? Do you employ solicitors to procure clients?

Very truly yours,"

Gov. Ex. 249 is a letter from J. I. Scarborough to the AMA, Attention: Dr. William D. Cutter, dated September 16, 1935:

"Dear Dr. Cutter:

Replying to your inquiry of the 9th, I wish to confirm the report that Trinity Hospital is engaged in contract practice.

The attitude of the AMA toward us in this matter has been so arbitrary, unreasonable and unfair that we feel disinclined to discuss the matter further.

Before going to the trouble to supply you with the information requested may I ask what is the purpose of your inquiry and what use you expect to make of the information, if supplied?

Please understand that there is nothing in our plan of practice to be concealed and that my remarks are not directed at you personally but at the organization which you represent. In fact I have very pleasant recollections of you back in the old Baltimore days.

Very truly yours,"

Gov. Ex. 236 is a carbon copy of an original letter over the signature of the defendant Cutter, dated September 23, 1935, addressed to Dr. J. I. Scarborough, Trinity Hospital, Little Rock, Arkansas:

"Dear Dr. Scarborough:

Thank you for your letter of September 16. One of the duties assigned to this Council on Medical Education and Hospitals is to maintain a Register of Hospitals accepted by the American Medical Association. I am pleased to send under separate cover a copy of the Register with our compliments.

I need not tell you the benefits that come to a hospital through recognition in that Register and the favorable publicity which is given since the Register is published in every issue of the American Medical Director and in the special Hospital Numbers of The Journal of the American Medical Association.

Enclosed is a copy of the 'Essentials of a Registered Hospital' and a copy of the 'Principles of Medical Ethics' to which the 'Essentials' make reference. Our object in writing to you was to extend to you the privilege of speaking for the hospital, and particularly supplying information on those points against which some objections have been made and which practices if they do exist and if persisted in would jeopardize the registration of the hospital.

Very truly yours, W. D. Cutter."

In the margin is a pencil notation reading as follows:

"No reply to 10-7-35. Continue hospital in Register?"

Gov. Ex. 250 is a letter from C. T. Snyder, Superintendent, Trinity Hospital, to the American Medical Asso-

ciation, Attention: Medical Directory Department, dated July 7, 1936:

"Gentlemen:

We received our new medical directory today, on our order of August 20, 1935, signed by M. D. Ogden of our staff, and I find that our hospital is left out of the listing of Little Rock Hospitals.

All information blanks ever received from you have been filled out and returned promptly. We have been listed every year since 1924 and have bought a directory every year. We are interested in knowing the reason for the omission.

Yours very truly, Trinity Hospital."

Gov. Ex. 251 is a carbon copy of a letter written over the signature of defendant Cutter, dated July 16, 1936, addressed to Miss C. T. Snyder, Superintendent, Trinity Hospital, Little Rock, Ark.

"My dear Miss Snyder:

Your letter of July 7 to the Directory Department has been referred to the Council on Medical Education and Hospitals. This Council prepares the lists of hospitals for the Directory.

We have, as you say, been pleased to carry the Trinity Hospital in our directory list and register of hospitals for a number of years. However, it became apparent that policies adopted by the hospital made it inconsistent for us to further continue to endorse the institution before our readers. This has reference to methods resorted to in connection with the contract for hospitalization and medical service.

We had correspondence with Dr. J. I. Scarborough but did not receive any answer to our letter written him on September 23, 1935.

Very truly yours,"

Gov. Ex. 210 is a letter from John Walker Moore to the Editor of the American Medical Association, on the letterhead of the Louisville City Hospital, dated May 14, 1937.

"Dear Sir:

I have a letter from the Trinity Hospital Private Clinic, Little Rock, Ark., asking me to recommend them an in-



teralist. In the letter they state that the clinic is owned and operated by Drs. J. I. Scarborough, M. D., Ogden, O. K. Judd and R. B. Moore.

Will you kindly inform me whether, or not this clinic is in good standing.

Very sincerely yours, John Walker Moore, Staff Executive."

Gov. Ex. 209 is a carbon copy of a letter over the signature of defendant Cutter, dated May 17, 1937, addressed to Dr. John W. Moore, Louisville City Hospital:

"MY DEAR DR. MOORE:

Trinity Hospital, operated by the physicians mentioned in your letter, is not recognized in the American Medical Association register of hospitals.

We also understand that their scheme of contract practice is not in harmony with their local medical organization, the County Medical Society.

Very truly yours,"

Gov. Ex. 8 is a publication entitled "Proceedings of the House of Delegates of the American Medical Association, the Eighty-Fifth Annual Session held at Cleveland, Ohio, June 11-15, 1934" and on page 35 reads as follows:

*"Resolution limiting physicians on staffs of hospitals approved for intern training to members of component county medical societies.*

(Excerpt)

Dr. G. Henry Mundt, Illinois, presented the following resolution, which was referred to the Reference Committee on Medical Education: (45) (46)

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement."

Mr. Kelleher. Subsequent portions of the proceedings show that that resolution was adopted by the House of Delegates.

Gov. Ex. 246 is a carbon copy of a letter over the signature of defendant Cutter, dated December 1, 1936, addressed to Dr. Christopher G. Parnell, Medical Director, Rochester General Hospital, Rochester, New York:

"DEAR DR. PARNELL:

We wrote you on September 8 calling your attention to a recent resolution passed by the House of Delegates of the American Medical Association, as follows:

The resolution is then quoted.

"Our analysis of the recently submitted staff list was quoted in the inspection report which was sent to you at the same time.

We are anxious to learn from approved hospitals as to whether they are in general agreement with the principle laid down in this resolution, and would be pleased to have your comments in the matter."

Gov. Ex. 254 is a letter from C. G. Parnell to Dr. William D. Cutter, Sec., American Medical Association, dated December 17, 1936:

"DEAR DR. CUTTER:

Relative to the resolution of the House of Delegates favoring a rule by the Council on Medical Education and Hospitals limiting membership on a hospital staff to members in good standing of local county societies, I am in somewhat of a quandary as to just what to say. Personally I feel that members of hospital staffs should be members of their local county societies. However, I do not believe in any inflexible rule setting up such a standard of eligibility.

I suggested to our Board of Directors a change in the By-laws relating to staff appointments, requiring that unless otherwise voted by the Medical Board, no physician would be eligible to the Visiting and Association positions of the staff unless he is a member in good standing of the county medical society. When this proposal was referred to the Medical Board for an opinion, I was rather surprised to find that its members—all members of the county medical society—were unanimously against it. Their feeling was that the county medical society should stand on its own merits and that it should offer enough of itself so that practically every member of a hospital staff would seek

membership, and that anything that savored of compulsion would subject Medicine to the same thing that rouses the resentment of doctors to the actions and attitudes of non-medical organizations.

It was pointed out that only a small percentage of the staff were not members of the county society and that most of this group were younger men, most of whom will shortly join the county society. I am sending you a list of our staff appointments for the hospital year 1935-36, with the non-members checked. You will note that allowing for duplications, excluding the Honorary and Consulting Divisions, there are 128 members, 118 of whom are members of the county society, leaving 10, or 8%, who are not. Even on the Honorary inactive staff of seven members, all but one being over 75 years of age, there is only one who is not a member of the county society. Of the 22 on the Consulting Staff, the only two who are not members of the county society are the Professor of Bacteriology at the University and a bacteriologist who is not an M. D. Our staff represents practically one-fourth of the active membership of the county society. On its membership are the President of the New York State Medical Society; the President, the President-Elect and the Secretary of the Medical Society of the County of Monroe.

I personally have been a member of the American Medical Association continuously for over thirty years and two of my sons are members of county societies.

Under the circumstances, as far as support of organized medicine is concerned, could the House of Delegates very well hold that the Rochester General is an unfit place for the training of interns?

With warmest personal regards and wishes for a Merry Christmas and a successful New Year, I am,

Sincerely yours, C. G. Parnell."

Gov. Ex. 255 is a carbon copy of a letter over the signature of defendant Cutter; dated Dec. 21, 1936, addressed to Dr. C. G. Parnell, Medical Director, Rochester General Hospital, N. Y.:

"MY DEAR DOCTOR PARNELL:

In response to your letter of December 17, let me express my appreciation of your information and your comments on

the affiliation of your staff members with your medical society.

The intention behind the resolution referred to was to smoke out from the staff of some hospitals certain men who were regarded as objectionable but whom the hospital felt a delicacy in removing.

I notice in the figures which you have kindly supplied, that your staff enjoys a very fortunate position with regard to the support of your professional organization, and that apparently any object which the Council might have had in view has already been anticipated.

Cordially yours,"

Gov. Ex. 30 is a carbon copy of a letter over the signature of C. M. Peterson of the AMA, dated December 22, 1937, addressed to Mr. Theodore Wiprud, Executive Secretary, Medical Society of Milwaukee, Wisconsin:

"DEAR MR. WIPRUD:

Enclosed are the regulations governing internship approval by the Council.

To this should be attached the following resolution of the House of Delegates of the AMA, adopted in Cleveland, 1934."

And the resolution which I have read is quoted.

"As far as the language of the resolution is concerned, no distinction is drawn between the full attending staff and other staff divisions. As a matter of actual practice, we carefully check the honorary, consulting, full attending and associate attending staffs in conjunction with our program of inspections. We obtain at the same time a list of all physicians who have courtesy privileges only. We do not check the courtesy list unless we find that all members of the other divisions are in good standing simply because of the magnitude of the task.

Under this principle we nevertheless call the attention of the authorities and staff of every hospital inspected and we have received favorable replies in practically every instance.

If we can be of further aid to you in explaining our method of procedure as outlined above, please call upon us.

Very truly yours,"

Gov. Ex. 145 is an opinion of the Judicial Council of the AMA entitled, "Appeal to the Judicial Council of the Ameri-

can Medical Association of Dr. A. L. Curtin, Dr. H. C. Dallwig, Dr. J. E. Rueth, Dr. Gerald A. Sullivan, Dr. H. F. Walters from the Decision of the Council of the State Medical Society of Wisconsin affirming the action of the Board of Directors of the Medical Society of Milwaukee County, Wisconsin, expelling the above-named doctors from membership", dated February 15, 1938, as follows:

"In 1935, at a meeting of the State Medical Society of Wisconsin, action was taken disapproving the establishment of any plan for the medical care of low income groups by persons not representing the State or County societies.

On February 8, 1936, a special meeting of the Board of Directors of the Medical Society of Milwaukee County was called to discuss a plan for the care of the employees of the International Harvester Company proposed by Drs. Curtin, Rueth and others. Drs. Rueth, Curtin and Dallwig were present. The essential features of the plan as presented by this group were as follows:

1. Unlimited medical and surgical service for \$1.00 per month for a single man; \$2.00 per month for man and wife; \$3.00 per month for man, wife and family.
2. Only diseases excluded from the plan—mental and contagious. Hospitalization not included.
3. There would be no solicitation of patients.
4. All physicians who joined the clinic would benefit from any profits.
5. Patients may select any physician on the staff.
6. Preventive treatment not included in the plan.
7. No written contract between patient and clinic. Participants in plan restricted to those with income of \$200.00 or less per month.

It was stated that plans to remodel proposed offices had been made, a lease had been signed, but no equipment had been purchased.

Between February 10, 1936, and February 14, meetings of the Public Policy Committee and the Board of Directors were held and Drs. Curtin, Rueth and Dallwig notified by letter that the plan was disapproved. At the February 14th meeting the Board of Directors directed letters requesting



resignation from the society be sent to the doctors proposing the plan. These letters were sent February 18th and were in the form of charges citing nine offenses.

Late in February, on the advice of counsel the doctors proceeded with their plan and on February 26th announced that the clinic would open for business April 1, 1936. In their letter of announcement they stated that subscribers 'must come of their own free will and without solicitation', making it very plain that the doctors as physicians were so restricted by the Principles of Medical Ethics.

March, 1936. About the middle of March the International Harvester Council (an employees' organization) prepared 'Instructions to Patients', of which the clinic doctors had 1000 copies printed to be given out in the plant to those subscribing to the plan.

March 17th the doctors by letter refused to resign from the medical society denying all charges contained in the letter requesting their resignation. March 20th at a special meeting the Board of Directors formally preferred charges and directed that an answer be filed by March 27th. The doctors made answer and a hearing was had March 30th. At this hearing the accused were found guilty and expelled on three counts, viz.

1. Violation of Chapter XI, Sec. 3. By-laws of the State Society (conduct tending to defeat the purposes of the society).

2. Violation of Chapter III, Art. 1, Sec. 4, Principles of Medical Ethics (solicitation of patients, advertising).

3. Violation of Chapter III, Art. VI, (Reserved) Sec. 3, Principles of Medical Ethics (contract practice contrary to sound public policy).

Appeal from the action of the Board of Directors of the Medical Society of Milwaukee County to the Council of the State Medical Society of Wisconsin and from the decision of that Council approving the action of the county society to the Judicial Council of the American Medical Association was duly made and heard. The claim was made by the appellants before the Judicial Council that they had not had a fair trial before the Council of the State Medical Society of Wisconsin by reason of the fact that the Executive Secretary of the State Association had furnished legal

counsel at the trial of the appellants before the Board of Directors of the Medical Society of Milwaukee County, thus prejudicing the Council of the State Medical Society of Wisconsin against their cause on appeal. The Judicial Council finds no evidence supporting such claim. It believes that such employment was customary and only for the purpose of protection of both sides of controversies by assuring that procedure should be correct and each side protected in its rights. The counsel was discharged on the completion of the trial before the Board of Directors of the county society and had no connection with any further procedures.

The Judicial Council affirms the action of the Council of the State Medical Society of Wisconsin in respect to the charge of violation of Chapter III, Art. I, Sec. 4, of the Principles of Medical Ethics (solicitation of patients, advertising). The Board of Directors of the county society found these appellants guilty on this charge. The Council of the state society affirmed that decision. The Judicial Council finds no error in the interpretation of the Principles of Medical Ethics by either of these bodies, nor error in procedure.

The Judicial Council affirms the action of the Council of the State Medical Society of Wisconsin in respect to the charges of violation of Chapter III, Art. VI, (Revised) Sec. 3, Principles of Medical Ethics (contract practice contrary to sound public policy). The appellants claim that at the time charges were preferred against them (March 20, 1936) and they were expelled (March 30, 1936) they were not operating under the plan and engaging in contract practice; that their practice under the plan did not begin until April 1, at which time the clinic was opened; that therefore they were not guilty when and as charged.

The fact that no medical care had as yet been given at the time charges were preferred, is not a reversible error in procedure. The appellants had abundant warning that the plan under which they proposed to operate was disapproved by the Board of Directors of the county society. They officially presented their plan to the board on February 8th, 1936. On February 14th, after disapproval of the plan, and after statements by the appellants to the Board of Directors that they would prosecute the plan even though disapproved, they were officially notified of disapproval

and request for their resignation was made which request was refused.

That at the time charges were preferred against them they had not as yet treated a patient under the plan is inconsequential. Certain preliminary preparations to treat patients necessarily had to be made before giving service but such preparations would not be made unless assurances were had by either written or verbal agreement or understanding which constituted a contract. The appellants were therefore engaged in contract practice from the time the agreement was made notwithstanding the fact that the preparations to treat patients had not been completed.

The Judicial Council is distinctly of the opinion that practice under the terms and conditions to which these appellants have agreed with the employees of the International Harvester Company constitutes a violation of Chapter III, Art. VI, (Revised) Sec. 3, of the Principles of Medical Ethics (contract practice contrary to sound public policy).

In respect to the charge that the appellants violated Chapter XI, Sec. 3, By-Laws of the State Medical Society of Wisconsin, the Judicial Council makes no pronouncement. It is not necessary that an accused shall be guilty on all charges made. If an accused is guilty on one or more major charges and no reversible error in the procedure of the trial is found, the Judicial Council will not interfere in the verdict pronounced by the county society and upheld by the state association. These appellants were found guilty by the Board of Directors of the Medical Society of Milwaukee County on two major charges of violation of the Principles of Medical Ethics of the American Medical Association, which action was sustained by the Council of the State Medical Society of Wisconsin. There was no reversible error in the proceedings.

The action of the Board of Directors of the Medical Society of Milwaukee County and of the Council of the State Medical Society of Wisconsin is approved."

Gov. Ex. 232 is a carbon copy of a letter written over the signature of the defendant Cutter and addressed to Dr. E. T. Thompson, Medical Superintendent, Mount Sinai Hospital, Milwaukee, Wisconsin, dated July 17, 1936.

"DEAR DR. THOMPSON:

It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain

physicians have been expelled from that society through participation in an organization known as 'Milwaukee Medical Center.' It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges.

May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:

'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.'

What possibility, if any, exists for observance of the principle laid down in this resolution?

Very truly yours,"

Gov. Ex. 233 is a letter from E. T. Thompson to William D. Cutter, M. D., Secretary, A. M. A., dated July 30, 1936:

"DEAR DR. CUTTER:

This letter will acknowledge with thanks your inquiry of July 17th, 1936, in regard to the controversy between the Milwaukee County Medical Society and the members of the Milwaukee Medical Center.

Mount Sinai Hospital has been forced, because of fear of itself being involved in legal complications, to take the stand that until this matter is adjudicated it is deemed advisable to take no drastic action.

With kind personal regards,

Very sincerely yours, E. T. Thompson."

Gov. Ex. 247 is a carbon copy of a letter written over the signature of defendant Cutter, to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin:

"DEAR DR. THOMPSON:

Please let me thank you for your letter of July 30. I will very greatly appreciate it if you will let me know when ever any action is taken.

Cordially yours,"

Gov. Ex. 244 is a carbon copy of a letter written over the signature of defendant Cutter dated October 24, 1936, addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin:

"DEAR DR. THOMPSON:

This is in continuation of our previous correspondence about qualifications for staff membership in Mt. Sinai Hospital. We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior.

How does this action affect Mt. Sinai Hospital? Are all members on your staff in good standing with the Milwaukee County Medical Society or eligible for membership in that Society?

Very truly yours,"

Gov. Ex. 245 is a letter from Edward T. Thompson to William D. Cutter, M. D., Secretary of the A. M. A., Chicago, Illinois, dated Oct. 30, 1936:

"DEAR DR. CUTTER:

I have your letter of October 24th in regard to the action of the Council of the Wisconsin State Medical Society expelling certain physicians from the Milwaukee County Medical Society.

I beg to inform you that the situation at Mt. Sinai Hospital is still in status quo.

Very truly yours,"

Gov. Ex. 234 is a carbon copy of a letter over the signature of the defendant Cutter addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin, dated November 27, 1936.

"DEAR DR. THOMPSON:

We have now received word from all hospitals in Milwaukee concerning the status of certain physicians who were recently expelled from the Milwaukee County Medical Society.

This matter will be reviewed by the Council at its next regular meeting in February following which we will be



in position to acquaint you with any further action or recommendation.

However, if any changes occur in the situation at Mt. Sinai Hospital we shall be very glad to have you keep us advised.

Very truly yours,"

Gov. Ex. 216 is a letter from Edward T. Thompson to William D. Cutter, M. D., American Medical Association, dated Oct. 22, 1937:

"DEAR DR. CUTTER:

Considerable time has elapsed since I communicated with you in regard to the status of the men associated with the Milwaukee Health Center. As you will recall, these men were expelled from the County Medical Society over a year and a half ago and at the time you wrote to me to ascertain the attitude of Mt. Sinai Hospital, which letter I answered under date of July 30, 1936.

We have heard nothing definite in regard to this matter since that date and we are anxious to know where the matter stands at the present time. Has the action of the County Medical Society been upheld by the American Medical Association? If not, when will action be taken?

Mt. Sinai Hospital has always been, and I hope will always be, cooperative with organized medicine, and where we can be of assistance to the County Medical Society, we do not hesitate to render such assistance. In fact I have on my desk at the present time a thank you letter from the secretary of the County Medical Society thanking the hospital for its participation in a preschool Round Up.

As I explained in previous correspondence, we have withheld decision in regard to physicians from the Milwaukee Health Center pending action by the American Medical Association.

I hope to be in Chicago on Tuesday, October 26th and would like to have the opportunity of discussing this matter with you.

With kind personal regards, I am,

Very truly yours, Edward T. Thompson, M. D."

Leading off from the next to the last paragraph of the letter, which reads, "I hope to be in Chicago on Tuesday, October 26th," is a pencil notation reading: "A. T. doesn't know if he called."

Gov. Ex. 217 is a carbon copy of a letter over the signature of the defendant Cutter addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, North 12th Street and West Kilborn Avenue, Milwaukee, Wisconsin, dated November 3, 1937:

"DEAR DR. THOMPSON:

The matters about which you inquire are still under discussion by the Judicial Council of the American Medical Association. As soon as a decision has been reached, we shall be sure to apprise you of the fact.

Very truly yours,"

Gov. Ex. 206 is a letter from Edward T. Thompson, M.D., to William D. Cutter, Secretary, on the letterhead of Mount Sinai Hospital, Milwaukee, dated April 6, 1938:

"DEAR DR. CUTTER:

I am writing you to ascertain whether or not there has been any change in the situation concerning compulsory County Medical Society membership on approved voluntary hospital staffs.

It has been several months since any correspondence has passed between us and since we are vitally interested in this matter, I would appreciate hearing from you in regard to it.

With kind personal regards, I am,

Very truly yours, Edward T. Thompson, M.D."

Gov. Ex. 207 is a carbon copy of a letter written over the signature of defendant Cutter addressed to Dr. Edward T. Thompson, Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin:

"April 13, 1938.

DEAR DR. THOMPSON:

We have recently been informed that the Judicial Council of the American Medical Association has sustained the action of the Milwaukee County Medical Society in the matter of certain physicians recently expelled from society membership.

Accordingly, we shall be anxious to know what action Mt. Sinai Hospital is taking in respect to the resolution

of the House of Delegates pertaining to staff appointments in hospitals approved for intern training.

Very truly yours,"

Gov. Ex. 208 is a letter from Edward T. Thompson, Superintendent, addressed to the defendant Cutter, dated April 15, 1938:

"DEAR DR. CUTTER:

Thank you for your letter of April 13th. I note that you referred to the resolution of the House of Delegates pertaining to staff appointments in hospitals approved for interne training. In checking our correspondence I note under date of July 17th, 1936, you wrote as follows:

'May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows:

"Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for interne training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Education and Hospitals to take this under advisement."

We note particularly that this resolution passed by the House of Delegates was referred to the Council on Medical Education and Hospitals. We are wondering whether or not the Council on Medical Education and Hospitals has taken any definite stand in regard to this matter.

I would appreciate receiving this information as soon as possible in order that I may present the whole matter to the staff this next regular meeting.

Very truly yours, Edward T. Thompson, M.D."

Gov. Ex. 211 is a carbon copy of a letter over the signature of F. H. Arestad, M.D., of the AMA, addressed to Dr. Edward T. Thompson, Superintendent, Mount Sinai Hospital, Milwaukee, dated May 5, 1938:

"DEAR DOCTOR THOMPSON:

In the absence of Dr. William D. Cutter, I have been requested to reply to your letter of April 15. May I say first

of all that the American Medical Association does not have, nor does it assume, legal authority over any hospital and consequently does not presume to dictate how hospitals should conduct their affairs.

If, however, a hospital desires the endorsement of the Council, it should be willing to comply with the principles which the American Medical Association considers necessary. One of the basic requirements is that the medical staff should be composed of regular physicians properly qualified as to training, licensure and ethical standing.

When a hospital, therefore, employs physicians expelled from county medical society membership on the basis of unethical conduct it is obvious that the hospital's standing is involved not only from the point of view of intern training but also as regards basic registration. We are anxious, therefore, to be notified of any action taken by your executive board.

Yours very truly, F. H. Arestad, M.D."

Gov. Ex. 205 is a carbon copy of a letter over the signature of defendant Cutter addressed to Dr. Edward T. Thompson, Mt. Sinai Hospital, dated July 14, 1938:

"MY DEAR DOCTOR THOMPSON:

In view of the fact that we have received no reply to our letter of May 5 and no notification of any action taken with respect to the employment of physicians expelled from the county medical society, we wish to inform you that we are recommending to the Council that Mount Sinai Hospital be removed from the approved intern list and also from the Register of the American Medical Association.

Very truly yours,"

Gov. Ex. 212 is a carbon copy of a letter over the signature of the defendant Cutter addressed to Dr. Ed T. Thompson, Medical Superintendent, Mt. Sinai Hospital, Milwaukee, Wisconsin, dated July 20, 1938:

"DEAR DOCTOR THOMPSON:

With reference to your recent telephone inquiry we wish to state that in our opinion the action taken by the county medical society in expelling physicians for unethical practice constitutes an equal censure of other doctors participating in the same clinic enterprise.

Very truly yours,"

Gov. Ex. 213 is a letter from Edward T. Thompson, M. D., to William D. Cutter, Executive Secretary, AMA, dated July 21, 1938:

"DEAR DR. CUTTER:

This will inform you that on recommendation of the Executive Committee of the Staff of Mount Sinai Hospital and ratification by the Board of Directors of the Mount Sinai Hospital, Drs. A. L. Curtin and H. F. Wolters were removed from the active staff of Mount Sinai Hospital and courtesy privileges were withdrawn from these two men, as well as from Drs. Sullivan, Reuth and Dahlwig, in accord with your letter dated July 14th, 1938, and telephone conversation held with you on Friday, July 15th, 1938.

Very sincerely yours, Edward T. Thompson, M. D."

Gov. Ex. 214 is a letter from Edward T. Thompson, Superintendent, Mt. Sinai Hospital, to the defendant Cutter, dated July 21, 1938:

"DEAR DR. CUTTER:

To supplement our letter of July 21st and to conform with your letter of July 20th we wish to inform you that Dr. B. H. Oberembt has been removed from the courtesy staff of Mt. Sinai Hospital and courtesy privileges withdrawn.

Very truly yours, Edward T. Thompson."

Gov. Ex. 295 is a letter from M. W. Ireland to defendant Cutter, letter dated March 27, 1937, which bears the stamp "Council on Medical Education and Hospitals":

"MY DEAR CUTTER:

The facts below just came to my knowledge and I am going to drop them on your desk. It may be old stuff to you people around headquarters.

The early part of the week a couple of men from the Home Owners' Loan Corporation (H. O. L. C.) visited the Surgeon General of the Army to say that they wanted to obtain the services of a doctor to look out for the health of their personnel, which incidentally is quite large. After the consultation, the Surgeon General asked Colonel Glenn Jones, a retired medical officer, to visit these people. After this visit which lasted for a period of two or three hours, Jones tele-



phoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine and so far as he could make out the Twentieth Century Finance Corporation of New York City was going to pay the expenses of this so-called medical care for the personnel of the H. O. L. C. Needless to say, Jones and the Surgeon General are dropping it like a hot cake.

Just treat this information as though it blew in your window as I don't want to be the person to embarrass the Surgeon General if there should be any embarrassment. Some of the prominent doctors in Washington are going to be wised up.

With best wishes,

Faithfully yours, M. W. Ireland."

And a postscript, "Reynolds has it in the back of his head that maybe the two chaps from the H. O. L. C. thought they were in Parran's office when they were talking to him."

And on the bottom of this letter is this notation in pencil: "Copy sent to Dr. Woodward and Dr. Leland 3-31-37."

Gov. Ex. 236, is a carbon copy of a letter from the defendant Cutter to Dr. Daniel H. Kress, the Medical Director of Washington Sanitarium and Hospital, Takoma Park, Maryland, dated July 27, 1937:

"DEAR DOCTOR KRESS:

The enclosure is a copy of Dr. C. M. Peterson's notes on the present status of intern training at Washington Sanitarium and Hospital, which should be considered in conjunction with previous inspection reports which have been submitted to your institution.

Your particular attention and that of other members of your staff is called to the recommendations enumerated at the end of the statement. It would be a matter of interest to this office to learn whether you consider these recommendations acceptable and the possibility for their adoption in your educational program. Such a statement would be useful to the Council when it meets in October in order to determine whether internship approval should be continued or not.

May we also call your attention to a recent resolution adopted by the House of Delegates of the American Medical Association; the language of which is as follows:

'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.'

'Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this recommendation at Washington Sanitarium and Hospital?

Very truly yours,"

Gov. Ex. 235, is a letter from Dr. Kress, the Medical Director of the Washington Sanitarium and Hospital, back to Dr. Cutler, dated September 28, 1937, bearing the stamp, "Council on Medical Education and Hospitals":

"DEAR DR. CUTLER:

The copy of the report of Dr. C. M. Peterson's inspection of the Washington Sanitarium and Hospital has been very carefully gone over by the staff of this institution. A committee was appointed to consider in detail the recommendations made in the summary of the report and the following plans have been worked out:

1. In order to provide for more careful supervision of the record work of the interns it was decided

(a) that daily the Record Librarian shall check the previous day's admissions for the recording of working impressions and report all delinquencies to the Medical Director to whom each physician shall be directly responsible.

(b) that the following regulation of the Board of Trustees of this institution shall be rigidly adhered to: 'If outside attending physicians do not furnish the complete history of their cases within 48 hours after admission, the intern shall be asked to secure same and to make routine physical examinations--this not to include pelvic examinations.'

(c) that hospital follow-up and instruction in differential diagnosis as it refers to the recorded working impressions shall be a part of the teaching program of each physician to whose service the intern is assigned.

2. and 3. In order to provide for better instruction in clinical and tissue pathology it was decided and has been arranged that there shall be weekly a clinical pathological conference conducted by Col. J. E. Ash, the pathologist, on Sunday morning from 11:30 to 12:00 o'clock, that the interns shall be required to be present at these conferences and the immediate staff shall be expected to attend.

4. In order to comply better with the recommendation regarding the definite assignments as listed on the report our rotating schedule contains the following:

a. Surgery—16 weeks, 10 days.

b. Medicine, Pediatrics—12 weeks, 10 days.

c. Obstetrics, Gynecology—4 weeks.

d. Night Duty (Obstetrics, Gynecology, Medicine, Pediatrics, Emergency Surgery) and Clinic—16 weeks, 10 days.

In regard to the resolution of the House of Delegates of the AMA, concerning the limiting of physicians on the staffs of hospitals approved for intern training to members in good standing of their local county medical societies, we would say that each application for staff appointment, which is form 561 of the Physicians' Record Company, calls for the medical societies to which the applicant belongs. Would this meet the requirement of the resolution? I believe that a satisfactory staff analysis could be made from our staff appointment file, for the average physician is quite careful in filling in the information desired on the application. Any recommendation or suggestion in regard to this will be greatly appreciated.

Sincerely yours, D. H. Kress, M.D."

Gov. Ex. 231 is a carbon copy of a letter from the defendant Cutter back to Dr. Kress, dated Oct. 5, 1937:

"DEAR DR. KRESS:

We appreciate having your letter of September 28 which supplements Dr. Peterson's report on Washington Sanitarium and Hospital. It is a matter of satisfaction to learn that his suggestions have been found acceptable and certain changes have been made in keeping therewith.

As far as the resolution of the House of Delegates is concerned, the intention remains that of hospitals stipulating

membership in the county medical society as the basis for the assignment of hospital privileges. The great majority of hospitals with whom we have corresponded on this point have agreed that this is a good basis on which to operate, and in fact, many have anticipated this recommendation by a considerable length of time.

Very truly yours,"

Gov. Ex. 237 is a carbon copy of a letter from the defendant Cutter to Sister Mary Rodriguez, Registered Nurse, Superintendent of the Georgetown University Hospital, Washington, D. C., dated August 7, 1937:

"MY DEAR SISTER:

The enclosure is a copy of Dr. C. N. Peterson's notes on the present status of intern training at Georgetown University Hospital together with comments relating to the application for approval of residencies in surgery. Will you be good enough to submit this statement to officers of the Staff who are responsible for the maintenance of the educational services for house officers?

A number of recommendations are incorporated at the end of the report. It is a matter of interest to this office to learn whether in your opinion these suggestions can be adopted. In consequence, any supplementary information which you care to submit will be appreciated.

In respect to the residency in surgery, your attention is called to the components which need further attention before full approval can be assigned.

May we also call attention to a recent resolution adopted by the House of Delegates of the A.M.A., which is as follows:

'Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.'

Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this recommendation at Georgetown University Hospital?

Very truly yours,"

Gov. Ex. 238 is a letter from Sister Rodriguez, the Superintendent of Georgetown University Hospital, to the defendant Cutter, dated October 18, 1937:

"MY DEAR DR. CUTTER:

Your letter of August 7th, together with Dr. Peterson's notes on the present status of interne training in the Georgetown University Hospital, have been presented at the October meeting of the Executive Staff. It gives me pleasure to report as follows:

All members of the Executive Staff are nominated and elected annually. The Executive Staff ruled at its last meeting that no physician shall be nominated or elected to any Staff of the hospital unless he is a member of his local Medical Society or the American Medical Association. Members who are already on the staffs, specified by you as not meeting these requirements will be notified to qualify within the year.

I. John R. Cavanagh, B. S., M. D., Associate Clinical Professor of medicine, was appointed Medical Director of the Dispensary on September 1st, with Frank S. Horvath, Associate Clinical Professor of Medicine, as Assistant. Dr. Cavanagh made the following assignments:

(a) The interne on Medicine I shall be in the clinic on Mondays, Wednesdays, and Fridays for the duration of the clinic period.

(b) The interne on Medicine II shall be in the clinic on Tuesdays, Thursdays, and Saturdays for the duration of the clinical period.

(c) The surgical interne shall be in the surgical clinic for the duration of the clinical period.

(d) The Medical Resident shall be in the clinic at least one day a week, so that he may follow up cases discharged from the hospital.

II. The Interne Committee is holding regular meetings and checking the record work of the internes. Residents are assigned one day each week to conduct record conferences with the internes, these conferences to be supervised by the chiefs of the respective departments."



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Gov. Ex. 239 is a carbon copy of a letter from the defendant Cutter to Sister Margaret, Registered Nurse, Superintendent of Providence Hospital, dated August 21, 1937:

"MY DEAR SISTER:

The enclosure is a copy of Dr. C. M. Peterson's notes and recommendations referring to the opportunities available for interns at the Providence Hospital. Please refer this statement to the officers of the staff and members of the executive committee.

You will recognize that there are several factors that are not in conformity with the Council's regulations governing internship approval. It is a matter of great interest to this office, therefore, to learn whether the recommendations enumerated at the end of the report are acceptable or not. As matters stand now, we believe quite likely that when this statement is submitted to the Council at its regular meeting early in November, internship approval will be withdrawn. Similarly, the application for approval of a residency in surgery is held in abeyance pending adjustment of the present situation.

We also append for your interest a recent resolution of the House of Delegates of the American Medical Association:"

And then comes the resolution, the Mundt resolution, that has been read before.

"According to our analysis, there are six members of your staff who are not affiliated with any of the constituent societies of the American Medical Association.

Very truly yours,"

Gov. Ex. 240 is a letter from Sister Rosa, the Acting Superintendent of Providence Hospital, to the defendant Cutter dated August 27, 1937.

"DEAR SIR:

No words can express my distress at the possibility of losing the American Medical Association's approbation of our Intern Training School. As requested, I presented the copy of Dr. Peterson's notes and recommendations to our Staff President, Dr. J. J. Mandell, and the matter will be discussed in detail at a special meeting of the Chiefs of our various services, to be called next Tuesday.

I assure you, the recommendations at the end of the Report are acceptable and will be given major consideration. In fact, many points brought into relief during Mr. Peterson's visit last June have been cared for satisfactorily. This is particularly true with regard to the patient's Records which have improved noticeably since July first.

You will receive very shortly, notification from our Staff concerning their desire and intention to cooperate wholeheartedly in placing our Internship on a platform that will meet the requirements of the American Medical Association. Nothing will be omitted either by the Staff, the Hospital, or the Superintendent to prevent what would prove a dire catastrophe to Providence Hospital, the loss of its accreditation for Intern Training.

I trust that when the Association will receive assurance concerning the adjustment of all that is considered inefficient by Dr. Peterson, the approval of a residence in surgery will be granted.

Lest any discrepancy should occur, please communicate with me freely on the subject of our standing, that proper reformatory measures may be put immediately into execution. Our desire is to give 100% co-operation to the demands of the Association, and I trust that if some of these readjustments take a little time for development, the Association will bear patiently with the unforeseen delay.

Sincerely yours, Sister Rosa, Acting Superintendent."

Gov. Ex. 230, is a carbon copy of a letter from the defendant Cutter to Sister Rosa, dated September 9, 1937:

"MY DEAR SISTER:

We acknowledge with thanks your letter of August 27 which expresses in convincing terms your desire to co-operate with this Council in improving intern training at Providence Hospital according to suggestions recently submitted by Dr. C. M. Peterson.

It will be a matter of great interest to receive the communication from the staff which you mention in your letter.

Very truly yours,"

—Gov. Ex. 241 is a letter from Sister Rosa, the Acting Superintendent, and Dr. Claude C. Caylor, the Secretary,

of Providence Hospital, to the defendant Cutter, dated October 12, 1937:

"Dear Doctor Cutter:

We have had several meetings of the Executive Staff of Providence Hospital for the purpose of considering the recommendations in Dr. C. M. Peterson's report of his inspection of our Hospital on June 15, 1937.

The membership was furnished with copies of this report prior to the meetings in order that each might familiarize himself with its contents.

The Staff agreed that the report was well founded, and unanimously agreed to meet the suggestions of the Council; Committees were appointed for the purpose of planning suitable regulations for internes and in order to obtain more efficient records. These Committees have submitted comprehensive reports."

The recommendations of the Staff are eliminated as not relevant.

Gov. Ex. 2434 is a carbon copy of a letter of the defendant Cutter to Dr. Walter A. Bloedorn, the medical director of George Washington University Hospital, Washington, D. C., August 23, 1937:

"Dear Dr. Bloedorn:

The enclosure is a copy of Dr. C. M. Peterson's report on the present status of intern training at George Washington University Hospital. We should like to have you refer this statement to those of your staff who are interested in and responsible for the internship program.

On the whole, statements are quite commendatory. However, a number of suggestions are incorporated at the end of the report, and it would be a matter of interest to this office to learn whether those suggestions are acceptable or not. They represent developments which, in our experience, have proved to be of real value elsewhere.

May we also call attention to a recent resolution adopted by the House of Delegates of the American Medical Association, the language of which is as follows:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the

Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.

Analysis of the staff is included in the report: What possibility, if any, exists for the observance of this recommendation at George Washington University Hospital?

Very truly yours,"

Gov. Ex. 215 is a letter from defendant Cutter to Dr. Bloedorn of George Washington University Hospital, dated Oct. 20, 1937:

"Dear Dr. Bloedorn:

May we call to your attention our letter of August 23, which accompanied a copy of Dr. C. M. Peterson's report with suggestions on internships at George Washington University Hospital.

Can you tell us at the present time whether his suggestions have been incorporated in your internship program?

Has any action been taken in respect to the resolution of the House of Delegates on the subject of staff membership contained in our letter of August 23?

Very truly yours,"

Gov. Ex. 243 is a letter from Dr. W. A. Bloedorn to Dr. Cutter, dated Nov. 4, 1937:

"Dear Dr. Cutter:

Thank you very much for forwarding us a copy of Dr. C. M. Peterson's report on the George Washington University Hospital.

I am very glad indeed to have his suggestions which, of course, are of real value.

A Staff Intern Committee has been organized to exercise supervision over the house officers training. The suggestion of the Journal Club for the house staff has been transmitted to the Intern Committee and arrangements will be made for convenient access to the University Medical Library next door.

With respect to the resolution of the House of Delegates on the subject of staff membership, we find that only nine

members of the total staff are not members of the local Medical Society and that of these nine, six are full time members of the Staff of St. Elizabeths Hospital in the Department of Psychiatry. As we do not have a psychiatric department in the George Washington University Hospital these members are used primarily in a teaching capacity for our medical students who go to St. Elizabeths Hospital, which as you know, is a Psychiatric institution. The problem then is reduced to three members of the clinical staff and I feel that this number will be reduced very shortly.

Very truly yours,"

Gov. Ex. 223 is a carbon copy of a letter from the defendant Cutter to Col. P. M. Ashburn, Superintendent, Columbia Hospital for Women, Washington, D. C., September 8, 1937:

"Dear Colonel Ashburn:

The enclosure is a copy of Dr. C. M. Peterson's notes on the present status of your educational service for residents in obstetrics-gynecology. Will you be good enough to transmit this statement to other members of the intern committee and the chiefs of service who are primarily responsible for the quality of experience which your house officers receive.

A number of recommendations have been attached to the report which, in our experience, have contributed to improving educational standards elsewhere. It is a matter of genuine interest therefore for this office to learn whether these suggestions are acceptable or not, preferably in advance of the next meeting of the Council which will occur early in November. We judge from certain remarks in the report that remedial measures have already been instituted, especially in relation to the record system.

May we also take this occasion to call your attention to the following resolution:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this under advisement.



What possibility, if any, exists for observance of this principle in your hospital?

Very truly yours,"

Gov. Ex. 227 is a letter from Dr. Cutter to Colonel Ashburn, Superintendent of Columbia Hospital for Women, Washington, D. C., dated November 3, 1937:

"DEAR COLONEL ASHBURN:

In continuation of our previous correspondence, are you in a position to report any action taken by your Board on the subjects covered in Dr. C. M. Peterson's report, especially the suggestions attached thereon.

This present inquiry also extends to the resolution which was quoted in our letter of September 8 relating to county society membership as a basis for hospital privileges.

Very truly yours,"

Gov. Ex. 228 is a letter from Colonel Ashburn, the Superintendent of Columbia Hospital for Women, here in Washington, to the defendant Cutter, dated November 5, 1937:

"MY DEAR DR. CUTTER:

Referring to your letter of November 3, 1937, I am glad to reply that Dr. Peterson's report of inspection of this hospital and the Medical Board's action and recommendation in regard thereto were submitted to the Executive Committee of the Board of Directors at its recent meeting, and both were accepted. The Committee agreed with the Medical Board in promising to put into effect the recommendations as it becomes possible, except that, in view of the hospital's financial condition and the exceptional medical library facilities in Washington, it did not wish to promise to improve the medical library of the hospital to any great extent.

As for demand that "physicians on the staffs of hospitals approved for intern training should be limited to members in good standing in their local county medical societies," it meets with the approval of the Medical Board as regards future appointments. So far as known, all present members of the staff of this hospital, except one, are members of the District Medical Society. The exception is a man of long service at the hospital and of high

standing in the profession. His reasons for not belonging to the Society are probably personal and nobody in the Medical Board suggested that any action be taken in his case.

Very sincerely yours, P. M. Ashburn, M. D., Superintendent."

Gov. Ex: 229 is a carbon copy of a letter from the defendant Cutter to Colonel Ashburn of the Columbia Hospital for Women, Washington, D. C., dated November 15, 1937:

"DEAR COLONEL ASHBURN:

Thank you very much for your letter of November 5. This completes our records as far as the recent inspection report is concerned. We shall be glad to turn over the complete file to the Council with favorable recommendations for continued approval of residencies in obstetrics-gynecology.

Very truly yours."

Gov. Ex. 36 read from to jury as follows:

(Excerpt)

"Minutes of the special meeting of the executive committee of the Medical Society of the District of Columbia, held Tuesday evening, June 1, 1937.

Dr. J. Lawn Thompson, Chairman, presiding.

Present: Drs. C. N. Chipman, A. J. Connolly, David Davis, William T. Gill, Jr., William P. Herbst, F. X. McGovern, Thomas E. Neill, H. H. Schonefeld, William M. Sprigg, Raymond T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, Earl R. Templeton, C. B. Conklin, and Dr. J. R. Verbycke, Jr., and Colonel Glenn I. Jones, by invitation.

The Chairman, in addressing the meeting, said that the reason for calling the special meeting was on account of certain serious situations that had developed. The Home Owners Loan Corporation, the Veterans' Bureau, the Soil Conservation Department and the Reconstruction Finance Corporation had already undertaken the development of a plan for medical care of their employees."

It was agreed between counsel, with the approval of the Court, that certain portions be omitted. Counsel will state

that he is omitting certain portions. If defendants request other portions, they will also be read.

"Dr. Thompson called on Dr. J. Russell Verbrycke, Jr., who has been very much interested in this subject.

Dr. Verbrycke said that he had heard of this plan and he had in his hand a prospectus, marked 'Confidential' in which details had been very well worked out.

He learned that they were opposed to the entire proposition of the prepayment plan.

The Chairman, Dr. Thompson, stated that we should look to the future; these plans all threaten the coming generation of physicians and their incomes.

Dr. H. C. Macatee was called upon by the chairman to state his views. He stated that some two Sundays ago he attended a meeting in Dr. William Gerry Morgan's office at which time consideration was given to this movement. He thought the medical profession had two weapons at hand, one, to forbid consultation with the physicians doing this type of work; the second, would be to withhold approval of any hospital that would take any cases or assist in the movement in any way.

Dr. R. Arthur Hooe at this time was given the privilege of the floor.

He said, 'Why has this all come about? Because people are not satisfied with what they are getting. Definitely and assuredly it is our fault.' He now made a motion to the effect that there would be a special meeting of the Society called for the coming Friday evening, at which time the membership would be informed of just what was taking place and they would be asked what they wanted to do in the premises. The motion was seconded.

The Secretary stated that Dr. H. R. Brown had called him up, stating that he was going to be out of town for ten days attending a medical meeting. Then when he returned he would be at the service of the committee. He also stated that another doctor interested in the movement would be available. It was said that Dr. Brown certainly should be invited to a meeting and that information should be obtained.

## (Confidential: For Private Circulation Only)

## A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington

## Foreword

The problem of medical care and costs has become a serious one. A large proportion of our population does not obtain adequate medical care . . .

Hospitalization insurance, of which several types exist in Washington, constitutes a partial solution of this problem. Thereby, people are enabled to provide in advance against the cost of hospitalization, and by so doing, many of low incomes who might otherwise have to ask for charity, are enabled to obtain hospital care, when they need it, in a self respecting manner. But this insurance is incomplete for it does not cover physicians', surgeons' and nurses' services and other items of importance in the medical bill. Some arrangement obviously is needed whereby individuals and families may pay a certain fixed charge monthly or annually, and receive in return medical care of whatever type and amount they require.

Proposed in the following pages is a plan by which the community of Federal Employees and their dependents in Washington may solve this problem,—if not completely, at least to the fullest extent possible by voluntary effort. The plan is tentative in nature. It is submitted to serve as a basis for discussion for individuals who may wish to constitute themselves a group to agree upon a particular plan and to take the steps necessary to establish it.

. . . The aim of this plan is to make available to Federal Employees in Washington, and to their families, adequate medical care, both preventive and curative; to provide this care at moderate cost; and to place that cost on a regular budgetable basis within the means of the group to be served. If federal employees are typical of the general population with equivalent incomes, many do not now obtain adequate medical care, especially preventive service and care in chronic conditions, while many others incur disastrous (sic) each year because of sickness costs. The provision of better care should promote health and well-being and reduce time lost from work because of illness. The plan should be of benefit not only to the employees and

their families, but also to the Government they serve." Mr. Kelleher. And then I will omit a large portion of it which is intended to outline the "need".

### "SCOPE OF THE PLAN

It is well to emphasize at the outset that the plan here proposed is potentially one of considerable magnitude. There are 119,000 federal employees in Washington. Should 30 percent avail themselves of the plan, the population served, including dependents, would probably number over 70,000 people. To provide care to this group would require the full-time services of 80 physicians. At a cost of \$25 per person, the annual budget of this enterprise would amount to \$1,750,000."

It is estimated that approximately two-thirds of all families of federal employees in Washington have incomes between \$1500 and \$4500. The proposed plan, while it would be open to all, is designed primarily for families in this income range and for single employees with incomes over \$1200.

### BENEFITS AND COSTS

The level of costs in such a plan as is here proposed must be geared to what the group in question is accustomed to spend.

Various surveys show that families of the income range in question spend four to five per cent of income, on the average, for medical care. In other words, averaging the years of low cost with the years of high cost, a family with a yearly income of \$1500 will spend approximately \$67 a year for medical care; a family with an income of \$2,000 will spend approximately \$90 a year; one with an income of \$3,000 will spend approximately \$135. Most federal employees, like most of the general population, do not now receive fully adequate care, preventive and curative. The aim should be not to reduce present expenditures, but to regularize them and to provide for these expenditures a distinctly better level of medical care than they now purchase. The charges under the proposed plan have been drawn up with these considerations in mind."

Mr. Kelleher. Now, I am going to omit for the sake of speed a lot of detail about those figures.



— "If a representative population enrolls, the amount available for provision of medical care at the specified rates, will be approximately \$25 per person a year. This is more than is available under similar plans elsewhere giving a service of comparable items, \* \* \*

Mr. Kelleher. And references are made in the appendix to those other plans.

"and should be sufficient to provide an excellent quality of service. The rates proposed will make possible salaries to physicians ranging from \$3,000 per year for the younger men up to \$12,000 for the chief of medical staff. Those salaries will be sufficient to attract and hold first-rate men. The rates are set so as to provide a safe margin of income over outgo, bearing in mind the facts that in all plans of this sort, the expenses are greater during the first few years than afterwards, and that it is desirable to accumulate a small reserve to take care of any unusual demand for medical service such as might be caused by an epidemic. After the first 3 or 4 years, it should be possible to lower the rates or to expand the services.

### Organization of the Proposed Plan

The plan should be cooperative in character, i.e., not for profit. It should be incorporated. A suitable name might be: Federal Employees Cooperative Medical Service, Inc. The organization should be controlled by a Board of Trustees, the members of which serve without pay. At the beginning the trustees will be the members of the committee which sponsors the plan and sets it in operation. Once the plan has been firmly established, the Trustees should be elected by the subscribers. Provision should be made for an advisory council representing the medical staff, and for another advisory committee representing the general medical profession of the District.

The executive head of the organization preferably should be a physician. His function would be to direct the organization as a whole and to serve as chief of medical staff. He would require the assistance of a lay manager who would run the business side of the enterprise. A physician who headed up the organization would need to be primarily an experienced and capable administrator, and a leader capable of inspiring, and supervising the physicians on his staff. Physicians with the proper administrative experience are

rare, and the right man will be difficult to find. If the right man cannot be found, the executive head of the organization may properly be a layman, in which case it would be necessary to have a separate chief of medical staff who should, of course, be a physician, and completely responsible for professional procedures and personnel."

Mr. Kelleher: I will omit some more of that detail and go on to this:

"To provide adequate care it is necessary to have one physician for every 800 to 900 enrolled persons. The smallest number of enrolled persons capable of supporting a well-rounded medical group is approximately 10,000. The medical staff in this case would be composed of, say, 10 physicians on full time and of a number of others (equivalent to 2 full-time men) engaged on a part-time or fee basis. As the number of subscribers increases, it will be possible to add full-time men in the less common specialties, and additional physicians in the more common specialties so that subscribers will have a choice among several men in each important field.

The pros and cons of provision of service by a staff of salaried physicians have been carefully considered. The disadvantage of salaried service is that it does not permit the patient to go to any physician he may select, but limits his choice to the physicians who are members of the staff. It is believed that this disadvantage is at a minimum in the case of the population of Federal employees, since many, being newcomers to the city, have not affiliations of long standing with physicians. In any case, the disadvantage is more apparent than real. Actually, the average layman generally chooses his physician on the basis of hearsay and is not qualified to judge competence. With a salaried staff, the patient receives care from a selected group of physicians, chosen by a chief of staff on the basis of their professional qualifications and competence. Furthermore, only in salaried, group practice is it possible to have a desirable degree of professional supervision of service and ready consultation of one physician with another. Finally, only on this basis can the economies flowing from organization be achieved.

The type of practice visualized here should be very attractive professionally to the physicians participating. It means a greater degree of cooperation and team work among them than is usual in 'solo' practice. They will have

readily at their disposal the aids, such as the X-ray and laboratory, necessary for the proper practice of medicine. They will be able to give their patients service of the type and extent required to achieve an optimum result, irrespective of the financial resources of the patient. The members of the staff will have annual vacations and will be able to get away for postgraduate study. At the salaries proposed, there will be no difficulty in obtaining a staff of absolutely first-rate physicians."

Mr. Kelleher: Then comes a great many figures.

"To establish the plan the following steps will be necessary.

(1) A small committee of individuals who are agreed on the necessity and soundness of the plan, and who will undertake to put it into operation, must be formed. These individuals must be willing and able to give considerable time to the purposes in hand.

(2) A sponsoring committee of 50 or 60 individuals should be formed. These individuals should be of two types: (a) individuals of prestige and standing in the government service, and (b) individuals who by virtue of positions as heads of employee organizations or associations, are able to lead and influence Federal employees.

(3) A certain sum of money to give initial working capital must be raised either by gifts or loans from a small number of people. The sum must be sufficient to set up an office, pay salaries and defray printing and office expenses during the interval between the launching of the plan and the collection of enrollment fees.

(4) The plan should be launched and publicly announced at a dinner or other suitable meeting, at which representatives of the press should be in attendance. Immediately thereafter all Federal employees should be informed of the plan through meetings and circulars, and should be asked whether they would be willing to participate.

(5) If the response is favorable, a campaign will start to obtain the necessary capital through advance payment of enrollment fees or subscription to shares. When the required funds are in hand the medical director will be engaged and as soon as he can obtain his staff and make the

necessary arrangements, the doors of the medical center will be opened, and the plan will commence to operate.

It will, of course, be desirable to obtain the fullest possible measure of cooperation from the members of the medical profession in the District of Columbia. After the plan is launched, the Medical Society of the District of Columbia will be invited to appoint a representative to sit with the committee which undertakes to establish the plan. It will also be requested to appoint a committee of several physicians to advise the medical director of the plan on all relevant matters. The intention will be to solicit the advice and cooperation of the local medical society and to work with it to the fullest degree possible.

The present plan will not supplant or injure the existing Group Hospitalization plan. That plan is now serving only a fraction of those who need it. Some individuals will want the complete coverage afforded by the plan here set forth; others will want simply the coverage afforded by Group Hospitalization. The city is large enough for both plans, and in the long run, each will aid the other."

Gov. Ex. 36 read from to jury as follows:

(Excerpt)

"Minutes of the special meeting of the executive committee of the Medical Society of the District of Columbia, June 21, 1937.

Dr. William M. Sprigg presiding.

Present: Drs. Daniel L. Borden, C. N. Chipman, A. J. B. Connolly, William T. Gill, Jr., A. C. Grau, William P. Herbst, Jr., Raymond T. Holden, Jr., R. Arthur Hooe, Joseph Horgan, Oscar B. Hunter, H. C. Macatee, Thomas E. Neill, Sterling Ruffin, William M. Sprigg, Earl R. Templeton, J. Lawn Thompson, C. B. Conklin, and Dr. J. Russell Verbrycke, Jr., by invitation."

Mr. Magee. Will you read the paragraph concerning the absence of the chairman and the vice-chairman?

"In the absence of the chairman and the vice-chairman the secretary announced that the first order of business would be the nomination of a temporary chairman to serve until the chairman appeared.

Upon motion, duly seconded and adopted, Dr. William M. Sprigg was made temporary chairman."

Dr. Verbrycke at this point read a detailed plan that had been organized by the Subcommittee as an acceptable substitute for the Cooperative Medical Service Plan.

Dr. Verbrycke stated that he had sent by air mail an outline of the Cooperative Medical Service Plan to Dr. W. C. Woodward and requested that Dr. Woodward meet with him in Washington. Every effort was made by Dr. Woodward to ascertain who was financing the project. He met with little success with his inquiry. It was stated that Dr. H. C. Macatee, at the meeting of the House of Delegates, in Atlantic City, outlined the plan that was all ready for trial in Washington. It seemed as though the attitude was 'We are sorry; we have no solution; you work it out'.

The chairman at this point addressed the meeting. He called attention to the fact that he had one son who had just completed his medical course; another son was just entering the medical school. This represented a tremendous personal investment, the usefulness of which he thought would be greatly curtailed by the installation of such plan as Mr. Russell contemplated fostering on the medical profession in Washington.

The secretary made a motion that a special meeting of the executive committee be held on the evening of Wednesday, June 23rd, and that Dr. Henry Rolf Brown be informed that his presence would be welcomed, also the presence of any of his conferees. This motion was seconded, and in the discussion the question of executive session on that evening was brought up.

Dr. Macatee, in summary, stated that two ways available in combatting or controlling any such scheme as recently proposed in Washington might probably be handled (1) through disciplining our own members who undertook to participate, and (2) the possibility of doing something to recalcitrant hospitals through pressure on their staffs. He



mentioned the various cooperative plans that were now in force."

The meeting was then adjourned.

I now read from "Report of the Committee on Group Medical Service Plan," which is appended to the minutes:

"The inception of Cooperative Medical Service plans with a prepaid payment basis for federal employees and their families in Washington forces the Medical Society to take a definite stand either for or against. This decision must be made upon full consideration of various advantages and disadvantages of this service not to the doctor but to the patient since the medical profession has always stood four-square for principles looking toward improvement of public health albeit at the expense of diminution of its own income. This unselfish attitude is well exemplified by the untiring efforts expended by the profession in furtherance of the prevention of disease and the concept that it is unethical to patent or use for private gain any new discovery for the alleviation of illness. Quite naturally, however, the organized profession is insisting upon not being forced by misguided or unfair competition to give up any of its rightful prerogatives.

The aim of Cooperative Medical Service is to supply complete medical care, including professional care and hospitalization to all participants at a cost which all can afford through the distribution of such cost over large groups whereby those who are lucky enough not to need the benefits bear their part of the expense of caring for those who otherwise would be subjected to perhaps an unbearable or impossible burden which is imposed by the highly developed and the necessary expensive modern medicine.

The profession of the District of Columbia has gone far toward the solution of the problem by its creation of the Medical Dental Service Bureau, which permits the budgeting of all expenses incident to an illness after the blow has struck, but evidently it has not gone far enough or the need for some plan such as the Cooperative would not have been felt."

Mr. Kelleher. I omit the next paragraph.

Mr. Leahy. What paragraph are you on now?

Mr. Kelleher. I am at page 2.

"The spread of costs with resultant benefit of adequate care to the hard-hit individual constitutes the one advantage of cooperative medical care and it is unquestionably a large one and worthy of deep consideration."

Mr. Kelleher: I omit—

—Mr. Leahy: No, read on.

"On the other hand, possible disadvantages, some of which may be said to be even likely under the proposed set-up may be enumerated as follows:

1. The absence of patient-personal physician relationship so necessary in many conditions.
2. The inability of the patient to have free choice of physician.
3. The danger of deterioration of service when competitive factors are removed through salaried personnel.
4. The danger of relative incompetence of personnel through appointment by favoritism or otherwise rather than on a strictly merit basis.
5. The inability of the patient to have always the best care for a certain condition if the specialist does not happen to belong to that group.
6. The usurpation of the time and money of the group by some who think that they are ill or enjoy poor health constantly at the expense of some of the more needy.
7. Actual statistics prove that group practice costs the individual patient more than private practice.
8. The possibility that group support will be enthusiastic at the beginning but will wane in time with gradual failures.

Much can be said for these disadvantages to offset in theory the advantage to the patient of the group plan.

A review will now be made of the history of some of the similar plans which have already had a thorough trial.

For many years Quintas have been operating in Cuba, where for a moderate fee per month all diagnostic, dispen-

sary, hospital and home medical and nursing care have been supplied with reputed satisfaction to both patients and the profession.

The Union Health Center in New York City has rendered service, since 1913, to its members whose incomes are from \$600 to \$1200 with clinics even in such specialties as allergy, cardiography, et cetera, with apparently a high degree of success.

There are some 150 group clinics throughout the country which supply prepaid medical care, but the outstanding example is the Ross-Loos Group of Los Angeles, and this organization is admittedly a success, both from the standpoint of the patients and the staff.

Trinity Hospital, in Little Rock, Arkansas, owned by a private group of physicians, gives medical service prepaid to an increasingly large clientele.

County medical societies have within the past several years inaugurated their own prepaid medical service bureaus in several parts of Washington and Oregon with free choice of physicians. Varying results are recorded.

In Fulton County, Georgia, 65 per cent of the County Medical Society have placed their names on the roster of their bureau. The only reported difficulty has been tardiness in paying the professional fees necessitated by lack of capital in the beginning.

In summary, it may be said that few of the prepaid medical setups have been without criticism but that many desirable features have been supplied and it is generally conceded that people of a class or group, who are unable to take care of themselves individually, have a right to band together if their aims can be accomplished collectively and provided contracts are entered into which are fair to all parties concerned.

Before dissecting the setup of the proposed Cooperative Medical Service Plan for Federal Employees, it might be well to quote the section of the Principles of Medical Ethics of the American Medical Association which will show where the doctor fits into the picture:

And the section is quoted as follows:

"Contract practice per se is not unethical. However, certain features or conditions if present make a contract unethical, among which are: 1. When there is solicitation of patients, directly or indirectly. 2. When there is under-

bidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community. 5. When free choice of a physician is prevented. 6. When the conditions of employment make it impossible to render adequate service to the patients. 7. When the contract because of any of its provisions or practical results is contrary to sound public policy.

It becomes evident that the plan proposed containing at least 4 of the objections raised by the American Medical Association, and, therefore, being stamped as unethical according to these standards, no member of the Medical Society can have a part in it as at present constituted, and still be a member of the Medical Society or of the American Medical Association.

The proposal bespeaks the wish that the approval of the Medical Society be accorded and that it have an active part in an advisory capacity. It would not appear that the aims of the groups and the features objectionable to the Medical Society are too divergent to be reconciled.

1. Under no condition can the Medical Society approve any plan which does not allow free choice of physicians so that it cannot approve of salaried fulltime personnel—Violation of conditions 4 and 5 of A. M. A.

2. The proposal to set up a local medical center with cooperatively controlled hospital, etc., is unquestionably 'contrary to sound public policy.' Not only would members be denied hospitalization of their own choice but present community hospitals, which have done their part through trying times in taking care of the public, would be pushed to the wall and be reduced to charity institutions or have to entirely disband.

3. The instructions for launching cooperative medical service groups contains the following significant paragraphs:

'It will of course be desirable to obtain the fullest possible measure of cooperation from the members of the medical profession in the District of Columbia. After the plan is launched, the Medical Society of the District will be invited to appoint a representative to sit with the committee which undertakes to establish the plan. It will also be requested to appoint a committee of several physicians

to advise the medical director of the plan on all relevant matters. The intention will be to solicit the advice and cooperation of the local medical society and to work with it to the fullest degree possible.

Now, the important thing for the Medical Society to insist upon, first and foremost, is that it not be consulted after the plan is launched, but that it be consulted first and have a part in drawing up the charter and by-laws to conform with necessary standards of ethics.

In fact, we propose that the Medical Society go further than this and that it formulate at this time as nearly an ideal plan as is possible with the endeavor to avoid all the objectionable features.

Briefly, our plan would contemplate a director, or board of several directors, from the Medical Society, who would serve as a central body to have supervision of the launching and future conduct of all cooperative groups to see that all ethical standards are complied with and to act as the final board of arbiters in all cases of dispute. This central board should be salaried and paid by assessments from the various cooperative groups.

Groups of 10,000, taken as an arbitrary unit, can be organized more or less after the pattern advised by previous planners, except that the only salaried doctor shall be the medical director of the group who shall control all medical and business activities of the group and who shall act as an admitting officer and advise patients as to their general course of procedure, but who shall not himself administer treatment. Each group shall be self-governing and independent, subject only to the general rules of the central directors. Instead of salaried personnel for diagnosis and treatment the patient shall have free choice of physician from a panel of the medical society members, all of whom shall be eligible to register upon accepting the rules and regulations and a standard fee table, after adoption.

Many details would have to be worked out in the matter of regulations, et cetera, and the above plan gives the basic set-up only.

It is moved that the executive committee call a special meeting of the Society for the consideration of the question, with the recommendation that a committee proceed with details of a complete set-up which, after adoption



by the Society, shall be publicized and submitted to all interested parties."

Gov. Ex. 37 read from to jury as follows:

"Minutes of the special meeting of the executive committee of the Medical Society of the District of Columbia, held Thursday evening, June 24, 1937, 8:00 p.m., Library.

Dr. J. Lawn Thompson, Chairman, presiding.

Present: Drs. A. B. Bennett, Daniel L. Borden, Charles B. Campbell, C. N. Chipman, A. J. B. Connolly, David Davis, William T. Gill, Jr., William P. Herbst, Jr., Raymond T. Holden, Jr., R. Arthur Hooe, Joseph Horgan, H. C. Macatee, F. X. McGovern, Thomas E. Neill, Sterling E. Ruffin, H. H. Schoenfeld, William M. Sprigg, Earl R. Templeton, C. B. Conklin, members of the Executive Committee.

By invitation: Drs. Thomas A. Groover, J. Russell Verbycke, Jr., Daniel F. Lynch (Secretary, D. C. Dental Society); Dr. Henry Rolf Brown, Mr. Wm. F. Penniman, and Mr. Zimmerman.

The chairman stated that the purpose of the special committee was to consider the Cooperative Medical Service plan as proposed to provide medical care for federal employees and their families. He called on Dr. Henry R. Brown to outline the procedure.

Dr. Brown stated that he was not chairman of the committee. He would suggest that Mr. Penniman, who is the president of the organization, be asked to open the question. Dr. Brown added that he would be available to answer any medical questions that might be asked.

The Chairman, addressing Mr. Penniman: "Would you be good enough to state your method of procedure as to what your proposition is in regard to the Government employees?"

Mr. Penniman: "I am very happy to be here this evening to give you the information that I think you are entitled to, and to correct any misinformation that we have under consideration with the Home Owner's Loan Corporation. I was very much relieved when I said to Dr. Conklin a moment ago that we felt you had come up to prepare the operating room, but I find it is all right.

"The organization of which I am its President is known as the Group Health Association. It is a body composed solely and entirely of the employees of the Home Owner's

Loan Corporation and the affiliated agencies of the Federal Home Loan Bank Board. In addition to the Home Owner's Loan Corporation, which because of its size many of you gentlemen have heard a good deal about it, there are other agencies such as the Federal Home Loan Bank Board, Federal Savings and Loan Association, Federal Savings and Loan Insurance Corporation. There are about 1,700 employees under these 4 agencies in Washington.

We have from time to time made something of a study of the health conditions of the employees of these agencies of which the Home Owner's Loan Corporation is perhaps the largest. We have found, as a result of this study, that a great many of the employees whose salaries are in the lower brackets have not been able to take advantage of the medical service that they are entitled to or that they should have. We have found that the cost to the corporation as a result of sick leave has been heavy. Looking deeper into that we found a great many of them, young men and young women who have gotten married, that have illness. They are not indigent because they have employment and receive income. That income is about all they have to live off. It was proposed and the subject placed before the employees as to whether or not they should be interested in an organization whereby for a small monthly sum, payable in dues, within their ability to pay they could be provided with full medical services. The answer was very enthusiastic in the affirmative and encouraged us to go ahead with this movement. They have obtained a charter. We have already prepared by-laws, elected a board of trustees and officers. We have selected Dr. Brown as the Medical Director.

Now it is proposed for this small monthly sum that they are to have everything that we can give them through this association in the way of medical service. The approach to it is on the lines of preventive medicine to the extent that we want these people who are members of this association to take full advantages of the services that it renders. We want them to be in a position to go to the medical center every day, every week, every month, and certainly once a year for physical examination. We believe that by so doing a careful physical checkup that oftentimes those who salaries are small and with some illness they perhaps would attempt to take care of it themselves. Often-

times it runs into a situation that becomes serious, we believe. It could have been corrected had they attended.

We are impressed with this fact—that the advancement in medical research has been as outstanding, no doubt, as in the automotive industry. We know more about the automotive industry because every magazine, every periodical and radio broadcast has something to tell us about the advance in the automotive industry. It has been just as great in medical research. The great trouble, gentlemen, is so many people are not taking advantage of it, and they don't take advantage until they are flat or down and have to call on the doctor. By this preventive approach we are in a position to take care of our people and the efficiency of their work is increasing very materially by being in better health, better state of mind, no bills to worry them at the end of an illness.

I might say our medical service provides for hospitalization, provides for surgical, provides for obstetrics, provides for all of these services that we can give them within our medical center. It is proposed in our clinic to have modern equipment. It is proposed to have a staff of physicians, technicians of the highest type that can be selected, under the direction of Dr. Brown, to observe in every respect ethical medicine in the highest degree.

I might say that some thought that this is a governmental institution. It is not a governmental institution at all. It is a private association, composed solely and entirely supported, managed and controlled by the employees themselves. It is localized to the District of Columbia.

I will be glad to answer any questions.

The Secretary: 'When and where is this clinic going to be erected?'

Mr. Penniman: 'It is not going to be erected at all. We are not contemplating building anything, but it is contemplated to house it in a building centrally located and within easy access of transportation.'

Q. In a Government building?

Mr. Penniman: Oh, no, the Government has nothing whatsoever to do with this.

Q. Have you selected your location?

Mr. Penniman: No, we haven't. We would be glad to have some suggestions.

Q. How about your personnel?

Mr. Penniman: We thought we had done a pretty good job when we selected Dr. Brown and we stopped there, because we are laymen. The selection of the staff and technicians we turned over to Dr. Brown. Dr. Brown perhaps can answer that question.

The Chairman: We would appreciate it, Dr. Brown, if you would say something about the staff or medical aspect.

Dr. Brown: The selection of the personnel is now in order. We are interviewing and we have contacted quite a number of men. No actual selections have yet been made of the medical or technician personnel. We expect to procure the services of men who are qualified in the several fields of medicine; men who have practiced the highest standards of medicine obtainable. We will be highly ethical in our practice in every sense. The equipment is modern equipment for diagnostic purposes and treatment purposes. We will only treat cases that will come to the clinic; hospital cases will be treated at the hospital.

The Secretary: Will the staff be full-time salaried men?

Dr. Brown: Full-time salaried men. It is a non-profit organization, for the benefit of the Association.

The Chairman: There are four units in the making—the Home Owner's Loan Corporation, Soil Conservation Service, Reconstruction Finance Corporation and one other.

Dr. Brown: We have no connection with any other association.

The Chairman: Will it be compulsory for these individuals to join?

Dr. Brown: Entirely voluntary.

Mr. Penniman: I would like to state that under our membership plan it is entirely voluntary on the part of the members to come in if they see the benefits of it; to resign any time they want to; to accept the services of our clinic. They may supplement it with their own doctor. They may take a portion of this service and maintain their doctor if they wish, and they may not come in at all.

The Chairman: Are these doctors that will be associated with the Association allowed to practice on the outside?

Dr. Brown: Full time. No outside practice.

Dr. T. A. Groover: How many do you expect to have on your staff?

Dr. Brown: To start with, four or five; perhaps more, depending on the needs.

Dr. A. B. Bennett: The membership can't be more than 1700!

Mr. Penniman: There is the individual membership for those who are single; family membership, which entitles the member and his already dependent members of his family to the benefits.

Dr. R. Arthur Hooe: May I burden you with two or three questions, gentlemen? You referred to the choice of the physicians to render the services and you use the personal pronoun 'we'. I am wondering from what the president just told us if that is not the 'Lindbergh we'. Does not that really mean you are choosing, and that you probably speak of it as 'we' in personal modesty?

Dr. Brown answered in the affirmative.

Dr. Hooe: Would you tell us, next, for the information of the committee, how you are guided in the choice of those physicians. I am trying to place myself in your position, with the same function to perform and wondering just how I would proceed in spite of the fact that I believe I am fairly well acquainted with the medical profession in the District of Columbia and in a pretty good position to choose from among the profession. Will you tell us how you proceed?

Dr. Brown: By personal interviews with the men and qualifications and evidence that he can point to giving us qualifications, his associations and background. It is an unknown quantity. We tell them we feel you are qualified to perform a certain duty. After I have had you on my staff six weeks I find you are not worth anything at all—if not, out you go.

The Chairman: Do they make application or are they requested?

Dr. Brown: I have interviewed quite a number of doctors who have sufficient qualifications to meet our demands.

The Chairman: The definite policy eventually would be of a man applying for such a position?

Dr. Brown: There is no objection to a man applying if he could back up his qualification; then we would give it consideration.

Dr. C. N. Chipman: You referred to the people coming to the clinic that if you could not take care of them in the clinic you would send them to the hospital.



Dr. Brown: I said that cases that were purely hospital cases would be referred to the hospital; we would only treat in the clinic those who are able to come to the clinic.

Dr. Chipman: Isn't it your intention to give complete medical care?

Dr. Brown: Yes, we will give treatment in the homes if they are not able to come to the clinic.

Dr. Chipman: It is your intention to give complete medical care?

Dr. Brown: We expect to have our staff give complete medical care.

Dr. Hooe: Do you think this corporation could function with any degree of satisfaction?

Dr. Brown: We have the experience of 250 clinics in the United States. We feel we can do what they can do.

Dr. Hooe: Do you think this corporation could function to any degree of satisfaction with the hospitalization being left out of the equation?

Dr. Brown: I don't see how we could complete treatment if the patient needed hospitalization and we dropped him there. It should be followed through. I don't think it could be done. The treatment is nothing more or less than a patient coming to your own office. He comes to you and he is well physically and mentally. You go over the case and you examine him and you dispose of him according to your judgment. If he should go to the hospital you send him. If you can treat him in your office you treat him.

. . . . .

Dr. Groover: Counting the families which you are going to look after, how many individuals did you anticipate?

Dr. Brown: According to statistics every 100 would have 125 in the family.

Dr. Groover: That is how many you would have.

The Chairman: It has been rumored that the project has been financed by the Federal Housing.

Dr. Brown: I have had come back to me a great many rumors—one, that this covers proposed state medicine, etc. Those are rumors that gather momentum as they go. You know the old saying 'A lie travels around the world while the truth is putting his boots on.' The medicine that we practice is the same as you in your individual capacities. Three or four doctors work together; you have diagnostic

facilities—that is all we propose, nothing more, nothing less.

Dr. Horgan: How has the inauguration of this set-up been financed?

Dr. Brown: I will leave that to the President to answer. I am interested in the medical.

The Chairman asked Mr. Zimmerman if he had anything to add.

Mr. Zimmerman: I am glad to be here and listen to the questions that are asked. They give an accurate and correct picture of what is undertaken.

The Secretary: I would like to ask Mr. Penniman a few questions; first I would like to know Mr. Penniman's initials; second, if it is not too personal or inquisitive, is he connected with the United States Government?

Mr. Penniman: My initials are Wm. F. In answer to your second question I am an employee of the Home Owner's Loan Corporation.

The Secretary: Official?

Mr. Penniman: Yes.

The Secretary: High official?

Mr. Penniman: I don't know how high you would call me.

Dr. Groover: May I ask a question? What do you estimate that your gross income from contributions would be?

Mr. Penniman: By contributions, you mean payment of dues. I should say, doctor, in rough, round figures, around \$50,000.00.

Dr. Horgan: How old is this?

Mr. Penniman: It is still on the bottle.

Dr. Horgan: Could you answer the question I asked Dr. Brown? How has the inauguration of this undertaking been financed or subsidized?

Mr. Penniman: In answer to your question—the plan, as I stated a moment ago, is to be supported in the main by the membership dues. It has been fixed at a figure which we believe is within the income of those of the smaller bracket to pay. There is one question in connection with that perhaps you need to know. We have made a study of the situation and find that the cost of the Home Owner's Loan Corporation sick leave has been very expensive for services rendered to the Home Owner's Loan Corporation and affiliated agencies in the examination of applicants for employment for services to be rendered to the Home Owner's

Loan Corporation; in the examination of its employees, that the Home Owner's Loan Corporation may get more efficient work out of these employees; from the constant observation of health conditions among employees generally from which the Home Owner's Loan Corporation will be a direct beneficiary. The Home Owner's Loan Corporation has appropriated a sum, an initial sum for 2 years to start this.

Dr. Groover: You speak about the lower income brackets. What are your limits as to membership?

Mr. Penniman: No restrictions at all.

Dr. Groover: You take high or low income employees?

Mr. Penniman: If they are eligible employees of the corporation they are eligible to join.

Dr. W. M. Sprigg: Is this not for any government employee?

Mr. Penniman: No, it is positively not. It is confined solely to the employees of this agency.

The Chairman informed Dr. Sprigg (who was not present when the meeting opened) that this was one particular unit represented here tonight, speaking for itself only.

Mr. Penniman: We know nothing about the others. We are not connected with them whatsoever. Speaking of the income brackets, about 80 per cent of the incomes will average \$2,400 and below.

The Chairman: You say these men are full-time men. How are you going to prevent them from practicing outside? In all government departments there are some doctors who practice at night—we call them sundowners.

Dr. Brown: I wish to take exception, not all government departments. I have been with the Veterans Administration for the last 18 years. I don't know of a man now in the administration who is practicing outside. In our organization if we find a man violating his obligation to us by practicing outside, he will no longer be with us.

The Chairman: That did not obtain in the Veterans Administration?

Dr. Brown: We have more men in the Veterans Administration than the others combined.

Dr. Groover: Do you make a contract with your beneficiaries?

Mr. Penniman: Not a contract. It would be an application for membership. That application is passed upon by the Board of Trustees just as any other organization. If

they are eligible and are entitled to the benefits, they are elected—if not, they are denied.

Dr. Groover: What is your criteria for accepting?

Mr. Penniman: The criteria is in the first group those who are members. Those who are not now members, there is provision in the By-Laws that they cannot become members for 30 days; their dependents cannot become eligible for services for 90 days.

Q. You do not make any guarantee either as to quantity or quality?

Dr. Brown: We make an agreement that we will give them the very best medical care.

Dr. Groover: That is the contract?

Dr. Brown: That is the agreement.

Mr. Penniman: It is just like joining a club. If you are not satisfied with the services you resign. If they are not satisfied they are entitled to withdraw at any time.

Dr. Hooe: Would you mind telling us, if you will—give us an illustration of what would disqualify new members for the benefits of this plan?

Mr. Penniman: I think one of the things that would disqualify them would be an abuse of the service. Any attempt to try and bring into the Association those who are not eligible would disqualify them and they would be dismissed.

Dr. Hooe: Before they are admitted?

Mr. Penniman: That is after they are in.

Dr. Hooe: How about before they are applying?

Mr. Penniman: I don't know anything that would particularly disqualify them with the exception that upon examination it is found that they have tuberculosis, and perhaps have to be confined to a sanatorium—we are not going to take care of these people for the length of time they will be confined. Things are in our by-laws that we do not go into.

Dr. Hooe: How about the venereal diseases?

Dr. Brown: We will treat venereal diseases with an extra charge of 50 cents per treatment.

The Chairman: Dr. Thompson, inquired as to the medical personnel.

Dr. Brown: The medical personnel will probably be from four to six men.

The Secretary: With those four or six men, would they include the various specialties? I understand you are go-

ing to give these people the very best medical care. I would think it would be presumptive that you would use these six or eight men to take care of the general work.

Dr. Brown: Consultants on the outside would take care of any special work.

Dr. Conklin: Would they be full time?

Dr. Brown: No.

Dr. Conklin: You would have a contract with the specialist?

Dr. Brown: Yes.

Dr. Conklin: In all fields?

Dr. Brown: Per unit basis.

Dr. Groover: You drop a member for nonpayment of dues?

Dr. Brown: I think those are matters that concern us and not so much the Society. They are our problem and not your problem.

Dr. Groover: It is a problem that will naturally interest us, because if you do that—

Dr. Brown (Interrupting): A person is eligible who keeps his dues up.

Dr. Groover: If he drops out who is going to look after him?

Dr. Brown: Through the same source as he gets it now.

Mr. Penniman: If he is not able to meet the monthly payments to this corporation he will come to you. He will be just the usual charity case.

Mr. Zimmerman: I think it is fair to say that if you had an employee whose financial condition were such, that an arrangement could be made to carry him along until he could pay.

Dr. Groover: There ought to be. He would automatically be thrown on the medical profession on the outside.

Mr. Zimmerman: If we don't pay dues at the club we don't play golf. It is not the same way here.

Dr. Brown: Every doctor would understand that question perfectly. We would be as human as the average practitioner of medicine.

Dr. Groover: The question has many implications. I will cite some of them, by personal illustration: Some ten years ago I happened to be down in Havana and I went out of a hotel and asked a hackman to take me to the best hospital in Havana. Said he, 'I will take you to the Club Hospital.' He drove me out to the hospital and



I was quite impressed. It was a nice hospital. I looked around, visited the X-ray Department, etc., and I asked, 'How is this supported?' He said, 'Well, the members of this club pay \$2.00 a month dues.' I said, 'How many members have you?' He said, 'We have upwards of 50,000 members.' With a little rapid calculation that is \$250,000 a year. I thought nothing more about it, but as time went on you see the position we were in. About all the outside doctor would have to do would be to take care of the indigent and the riff-raff and the members who had been dropped by the club. Now that, you see, left them in a plenty bad way. All they had to do was to look after indigent groups. That did not go on. I don't know all of the facts. I have been reliably informed that that very situation was largely instrumental in developing this last revolution they had in Cuba. The doctors who were on the outside were about to starve to death and to use a popular expression, they were on a sit-down strike. Many of them left Cuba and came over to Miami. I merely mention that to recall to your minds that this sort of thing has implications.

Dr. Brown: We have no indigents in employment.

Dr. Groover: Your people may become indigent.

Dr. Brown: Then it becomes the matter of the state.

Dr. Groover: I see, but as a matter of fact the state don't take care of indigent.

Dr. Brown: We are not going to drop a man or let a man suffer for lack of care if he is a member of our group. That is a humanitarian principle that you apply in your own practice.

The Chairman: You spoke about tuberculosis. If an employee had active tuberculosis he would be doubly in need of care. He would not be allowed to work in the Government—he would be dropped from the group.

Dr. Brown: We provide this to the point where it be recommended that he have institutional care.

Dr. C. N. Chipman: It is said you intend to give dental service as well as medical service.

Dr. Brown: We haven't considered that.

Dr. Hooe: Have you yet arranged the duration of the hospitalization in your mind—the extent of the time during which your beneficiaries may be hospitalized?

Dr. Brown: Twenty-one days for any one illness, except in contagious diseases.

Dr. F. X. McGovern: I gathered from your initial statements that one of the facts that caused you to inaugurate this plan was your sick bill, or health bill, in the Home Owner's Loan Corporation. Have you proven that the sick bill is out of proportion to other departments of the Government?

Mr. Penniman: I could not answer that because I made no check of any other departments of the Government.

Dr. McGovern: Notwithstanding in your own organization by comparison, what you have heard of other departments?

Mr. Penniman: No comparison.

Dr. McGovern: Because of your particular health bill—

Mr. Zimmerman (Interrupting): You perhaps realize that the Home Owners Loan Corporation is somewhat different from other Governmental agencies in that it operates on a reduced amount of lost time because of sickness, physical fitness. The employees show that you get better performance just like any private concern.

Dr. McGovern: I hadn't any knowledge that it was any different than other Federal departments.

Mr. Zimmerman: We have a different interest in improving operating efficiency.

Dr. McGovern: Dr. Brown, in your general statement you brought out the fact that you planned to practice ethical medicine. Just how can you reconcile having staff men with free choice of physicians? How the patient would have free choice of physician, in terms of the ethics of the American Medical Association?

Dr. Brown: The people join with the knowledge of the staff and, of course, there would be no free selection only as it pertains to the staff itself. If they are not satisfied with that staff they are privileged to get anyone they please at their own expense. We give them the service—we guarantee the service we have for them.

Dr. McGovern: In your setup there is no free choice of physician if they continue to belong?

Dr. Brown: They accept the faculty or staff as is. If they wanted you we could not have you to come in and see them.

Dr. Groover: According to rough figures you have an income of \$50,000 a year. With that you propose to hire five or six doctors—full-time. You are proposing to hire technicians to operate the clinic and possibly pay rent, etc.,

and then provide hospitalization. I don't know why, but that just lets the question that it seems to me you are operating the thing on a rather slim budget to provide the patient with medical care.

Dr. Brown: We don't feel that way about it Doctor. I have recently visited a number of clinics in operation. I have visited within the year the Loos clinic in Los Angeles which has 15,000 members and a staff of 60 men. Have visited other clinics that have a staff of six or seven men, or four or five men. Recently I visited the Milwaukee-Rueth Clinic, which has five men, and I visited other clinics in Chicago; in Philadelphia there is also operating successfully a like and similar clinic giving excellent treatment. They are really practicing men who know a lot. It has been demonstrated that they are fully satisfied with the setup.

Dr. Groover: Just developing the fact.

Dr. Conklin: The Home Owners' Loan Corporation is not just a local affair?

Mr. Penniman: Oh, no. It has branches throughout the country.

Q. Would you be so good as to state whether you have any control over these branches outside of Washington?

Mr. Penniman: This is the headquarters. It has important offices in every state.

Dr. Conklin: It would seem reasonable to you that this clinic to be successful, which I believe it is going to be, that this clinic be instituted in these other areas?

Mr. Penniman: It is not contemplated at all. I would say there is only one factor that you would subscribe to it. We have in our regional offices where there is the largest number of employees, what we call a First Aid Room. There is a trained nurse in charge, i.e., to take care of just the emergency cases that develop during the day. Employees are privileged to go into this First Aid Room and get temporary treatment. The only contemplation at this time is to place those infirmaries under the directorship of the Medical Director to the extent that these nurses will have some directing head. We don't want these nurses giving hypodermics when they have no business to—they have no business prescribing medicine. We think they ought to be under the supervision only of a medical director as to the extent of the treatment it calls for.

Dr. Conklin: Under whom are these nurses now?

Mr. Penniman: Under the management.

Dr. Conklin: Governmental?

Mr. Penniman: Home Owners' Loan Corporation's local management.

Dr. Conklin: A Governmental institution. The nurses are definitely governmental employees?

Mr. Penniman: On the payroll of the Home Owners' Loan Corporation.

Dr. Conklin: Now then you propose to take them out of the Government?

Mr. Penniman: Leave them in the Government.

Dr. Conklin: And then Dr. Brown would have a double function. He would be acting as a governmental official and also supplementing as a head of an institution?

Mr. Penniman: He would not prescribe for any patients.

Dr. Conklin: Dr. Brown would not have any government position at all?

Mr. Penniman: He would not be under the Government.

Dr. Conklin: Suppose that Dr. Brown, for instance, issues some orders to some of these nurses and they are not just right fundamentally. Now, who would step in and who would have anything to say about Dr. Brown's definitely apparent misdeeds?

Mr. Penniman: The same person that would step in right now, under the direction of laymen, which is a situation we have never liked. Having them only with Dr. Brown as a guide to certain limitations to which he advises—only a matter of advice.

Dr. Brown: That would be through the local management?

Mr. Penniman: He tells them what they should not do.

Dr. Conklin: Is there nothing extraordinary in your mind about that situation?

Mr. Penniman: It occurs all right.

Dr. Conklin (Continuing): Dr. Brown, operating an enterprise that is entirely disassociated from the United States Government and yet Dr. Brown does have something to do with the Government in these various places throughout the United States.

Mr. Penniman: As I stated this extension of this plan out of these areas is not contemplated at all. They would still continue to operate as they are now operating. Whatever benefits Dr. Brown could give them would be that in any local situation. Any local doctor would be glad to

advise the nurse as to the extent of the treatment she should give.

Dr. Conklin: No connection with the Public Health Service?

Mr. Penniman: None at all.

Dr. Groover: I would like to ask if your organizing committee considered any other form of setup for operating this service which you speak of?

Mr. Penniman: For example, what would you have in mind?

Dr. Groover: For instance, you wouldn't see if you could make any arrangements with the Medical Society to render the service to a group of people?

Mr. Penniman: Would it have been possible if we had contacted the Medical Society whereby the employees could get the benefits of the Medical Society?

Dr. Groover: I think it may be possible.

Dr. A. B. Bennett pointed out that the employers, under compensation laws, through the Insurance Company pay the doctors per visit, per unit of service. They don't maintain a clinic and use the profession of the city.

Dr. Groover: I don't speak for the Medical Society. I don't mean for you to interpret it that way. I think I would be willing, for instance, to bargain with a group on some such basis.

Dr. Brown: What is the material difference in the way it is being done?

Dr. Groover: I think I can point that out. The reason I asked that question was the answer 'best medical service.' There is a difference of opinion as to what might be best medical service. The difference is you pay into the concern certain amount of money; the other plan you pay for what you get when you get it.

Dr. Brown: Insurance contracts are not always satisfactory. There is a great deal of fault found in the way it is operated. We feel this is a much more satisfactory and more reliable plan.

Mr. Penniman: You are familiar with the Group Hospitalization plan, for which I think the members pay 75 cents a month. There is no unit basis.

Dr. Groover: I beg to differ. Your contract with Group Hospitalization provides certain specific accommodations for a certain specific time. They have a definite contract—you don't have.



Mr. Penniman: The point I was making—you don't use hospitalization until you need it, although you may be paying for several years. Not a unit basis at all. It is really hospital insurance. We would prefer in our Association to look upon it the same way as health insurance.

Dr. Groover: That is all right, but isn't this—

Dr. Brown (Interrupting): A prepayment health insurance plan, nothing more, nothing less.

Dr. Groover: The Workmen's Compensation is pretty much the same thing. I have been buying Workmen's Compensation insurance for a number of years, and never get a penny back from it. Isn't that right?

The Chairman: Men with a salary you could pay on a basis of a \$50,000 proposition—

Dr. Brown: I could get many competent men around Washington; could get men right here in Washington who are not making a decent living.

Dr. Conklin: Why do you think they are not making a decent living?

Dr. Brown: I don't know the reason.

Dr. Conklin: Do you think the men of best ability are making a living?

Dr. Brown: I think the men with the best ability are making a good living. Men with equal ability are not simply because they have not got the standing, not here long enough. Development of practice takes a number of years.

Dr. C. B. Campbell: What do you propose paying these doctors?

Dr. Brown: That depends on their ability.

Dr. Campbell: I have done a little figuring: The Medical Director is to receive \$10,000; five physicians, say 5 @ \$5,000 would be \$25,000; rent \$2,000, which I think is very reasonable, would leave \$13,000. You have hospitalization of the patient, technicians, equipment, secretary, your office force, your overhead, and I was wondering if the Executive Committee or your Committee on Arrangements get any salary.

Dr. Brown: No salary.

Dr. Campbell: If I was running a store on that overhead I doubt that I would have a profit.

Dr. Brown: We don't want a profit.

Dr. A. B. Bennett: Is there any way the Medical Society could help?

Dr. Brown: We are anxious to go with the Medical Society. I am anxious to become a member. We will be very glad to have our staff make application and go with your Society in every way we can for the uplift of medicine. If you can help us select personnel we will be glad to take recommendations from this organization, to consider them, and perhaps employ them.

The Chairman asked if Dr. Daniel F. Lynch, Secretary of Columbia Dental Society, had any questions to ask.

Dr. Lynch: I would like to ask Dr. Brown—in your visit throughout the country, did you find sections on dental diagnosis in connection with these clinics?

Dr. Brown: Some of them are partnerships; some on salary, some on commission. We are not at this time considering dental service at all.

Dr. Hooe: May I ask Mr. Penniman two brief questions? Do you find, as a result of your study of this plan, are you led to the conclusion that by means of this plan the individual beneficiary is subjected to less expense during any given year than he has been in the past—that it is a financial saving to him?

Mr. Penniman: Yes, not only a financial saving to him but gives the member the benefits of a medical service which would cost him a great deal more money if he didn't take advantage of it.

Dr. Hooe: Second, and last question. Did we not understand you to say that you have incorporated and that you now have the articles of incorporation in this activity in which you are going to have certain members of the medical profession to do your medical work?

Mr. Penniman: Yes, that is correct. The corporation is chartered to employ the medical physicians.

Dr. A. B. Bennett: Incorporated to render medical service?

Mr. Penniman: Yes.

Dr. Groover: Do you operate under any insurance law?

Mr. Penniman: What do you mean?

Dr. Groover: They have insurance laws in the District of Columbia.

Dr. Penniman: Indemnifying the doctors?

Dr. Groover: No. Under the District of Columbia Insurance Law all life insurance companies in the insurance business have certain regulations prescribed by Congress.

This is a health insurance. For instance, they have Group Hospitalization, Inc., under the District of Columbia Insurance law.

Dr. Brown: It is not a health insurance in that sense. We don't insure the health as your insurance policy covers it. Not an insurance in that sense at all.

Dr. Groover: Isn't that sidestepping the question?

Mr. Penniman: No, I don't think it is. It does not mean we will pay them for health insurance for benefits. It is preventive medicine.

Dr. Groover: Other companies do exactly the same thing. You go down and buy a Health and Accident policy; that company has to be licensed to practice under the law.

Dr. Thomas E. Neill: Don't they get around that by deducting sick leave and the salary goes on just the same?

Dr. Brown: We go on according to the rules—sick leave and absence leave. May be 30 days, or 15 days, so much according to leave. Annual leave may be applied to sick leave. They are paid for a definite period. In Civil Service they have a definite period for sick leave. If you use that up you can call on your annual leave. If it goes beyond 90 days they are on without pay.

Dr. W. M. Sprigg: Suppose you should be stricken with an epidemic and your funds immediately available are used up. Where would you secure funds to carry on? Have you any reserve?

Mr. Penniman: There is no reserve. We probably would come to the Medical Society for some help.

Dr. H. H. Schoenfeld: The employees are not necessarily Civil Service employees?

Mr. Penniman: There is no reason why the Association could not either raise the dues or lower the dues, according to whatever its treasury is. It is a nonprofit organization. The officers and trustees receive no salaries.

Dr. Sprigg: Just as we do in hospitals. We have given our services to the indigent for years.

Dr. H. H. Schoenfeld: The employees of this corporation are not necessarily Civil Service employees?

Mr. Penniman: This is a private corporation.

Q. It is not a Government department thing?

Mr. Penniman: Private institution entirely.

Dr. Sprigg: I would like to ask whether the Home Owners' Loan Corporation, in the case of emergency, will come forward and loan you money to carry on?

Mr. Penniman: I don't know how we could go to the Government and ask for it.

Dr. Sprigg: The Government can do anything in an emergency.

Mr. Penniman: We would not refuse.

Dr. Schoenfeld: Your corporation can for purposes of study of health, appropriate money to this organization?

Dr. Sprigg: The Home Owners' Loan Corporation can appropriate to the organization for services rendered it. The Home Owners' Loan Corporation in the case of emergency can appropriate without any Government supervision?

Mr. Penniman: That is right.

Dr. Conklin: I think that all of us present tonight appreciate just what these gentlemen have done. They have been kind enough, good enough to come down and meet with us. They have answered all of our questions and haven't denied us at all, no matter what their own personal feelings may have been concerning some of them. We are primarily interested in the patient's welfare. That has been demonstrated time and time again in this country and throughout the United States. I am wondering if they would accept the opportunity of a committee of three, of the Medical Society to meet with them, with a view to making presentation as clearly as possible of the Medical Society's attitude primarily toward this particular proposition from the viewpoint of the patient, primarily. I wonder if that would be acceptable. I have no authority to say that the Medical Society would appoint such a committee. But if that would be acceptable to the Medical Society do you gentlemen think you would accept a proposition of that kind?

Dr. Brown: A further meeting to elucidate certain questions?

Dr. Conklin: I am sure there are certain ideas that definitely seem to be fixed. There is a possibility in further conference with three representatives of the Medical Society, who would go down to the Home Owners' Loan Corporation and talk these things over and see whether or not some alternative proposition will operate that would be acceptable to some 800 practicing physicians here in the District of Columbia. I would think it would be a wonderful thing.

Dr. Brown: Our objectives are identical with those you have expressed. We have no objections to meeting any committee of three.

The Chairman: To confer with their own committee if they would like to have such a meeting?

Mr. Penniman: We have a Board of Trustees.

The Chairman: It might not be a bad idea and to have as many men as they want, to discuss the thing further. There is no question that other units in the Government are going to undertake the same thing.

Dr. Conklin: If we may have a definite assurance, tentative acceptance of this plan, I think your coming down has been just a most successful thing with a view to definite harmony. I think that is what we want. We want to see these men and greet these men, and have them certainly not fighting organized medicine, because I think any doctor who attempts to do that is doomed to failure. We want to have this committee of three representatives to meet with you and talk these things over and with a possibility of making some little re-arrangement wherein we can come before our entire membership and present this thing and recommend adoption.

Dr. Brown: We are anxious for cooperative intercourse. We would be glad to consider those plans.

Mr. Penniman: I want to say—I should have said and would have liked to have said at the outset—reversing the words of Shakespeare: ‘I came down with the idea of praising Caesar not burying him.’ I have the most profound respect for the medical profession—always have had and always will have. It is the desire of this Association to work to the ultimate end that we may give our employees medical care. I speak not as an official of the Home Owners’ Loan Corporation but as one of the employees. Medical Service of the highest type, within their ability to pay and to solicit at every point of view possible the full cooperation of the Medical Society of the District of Columbia. Glad to have it. I would like to make a suggestion—since we have a Board of Trustees consisting of eleven employees of the corporation who have been elected by the employees; that if you would be good enough to drop us a line so that we can put it clearly to the Board, your point of view, I am safe in saying that it would be met with a ready response.

Dr. Conklin: You mean the point of view as to this committee of three?

Mr. Penniman: Yes.

At this point Mr. Penniman, Dr. Brown, and Mr. Zimmerman left the meeting.



The Chairman asked the wish of the committee in the matter.

Dr. W. M. Sprigg was of the opinion that the committee could do nothing until the Society as a whole authorized it.

Dr. A. B. Bennett felt that a subcommittee should be appointed to bring about some change in the arrangements before a Society meeting is called, and the committee should have the plan as near finished as possible.

Dr. R. Arthur Hooe stated that he agreed with Dr. Bennett, but at the same time the committee was committing itself and definitely taking action on a matter involving public policy. 'While I am not in personal sympathy with it you placed in the Constitution last winter a provision that prohibits a committee of this kind from taking this action.'

The Chairman brought out the fact the report submitted by Dr. Verbrycke at the last meeting of the Executive Committee was accepted in principle.

Dr. Hooe said the committee could present that report to the Society and ask it to appoint a committee to confer with a committee of the Group Health Association. But when the Executive Committee appoints a committee to meet with this group to effect a compromise, to iron out the differences, for which the Executive Committee tonight does not stand, Dr. Hooe was of the opinion the committee was therefore taking action on a matter involving public policy. He added, 'You must have a meeting of the Medical Society and present Dr. Verbrycke's plan and what has occurred here tonight and ask it to appoint a committee.'

The Chairman said he would welcome a motion to the effect that a copy of these minutes be sent to the Active Membership so they would know what was going on. It was his opinion that 90 per cent of the membership knew nothing about this plan.

Dr. J. Russell Verbrycke made a motion that a copy of the Executive Committee report be sent to the membership for their digest with a notice that the matter will be acted upon at a certain meeting of the Society. He brought out the fact that his report contained the recommendation that a committee be appointed to carry on the work and not just for the purpose of meeting this committee but to get together and try to formulate a plan which will not violate any provisions or principles of the Medical Society. Any

final action would be dependent upon both organizations; not only of this organization but that of subsequent organizations which develop. Dr. Verbrycke pointed out that to make his motion parliamentary, it should come from a member of the Executive Committee.

Dr. H. H. Schoenfeld moved that Dr. Verbrycke's suggestion be adopted. Seconded.

The Chair pointed out that there were four of these units in the making. He added that Dr. Brown was adverse to meeting with the Executive Committee of the Society, postponing the time set. Just today at 12 o'clock he again called and asked to have the meeting postponed to a later date. The Chairman told Dr. Brown that this could not be done.

Dr. Sprigg would inquire if the motion would mean that a committee of eleven is to be appointed to meet with the committee of Group Health Association?

Dr. Schoenfeld said that was not the intention. He said it was his idea in offering the motion suggested by Dr. Verbrycke, that the whole thing should be carried promptly to a special meeting of the Society; therefore the report becomes the report of the Executive Committee to the Society. Then after the Society has made its determination, the committee may be set up as indicated. He said he realized that if a committee is appointed after a meeting by the Society, that that committee would come back with a final report that would require another meeting at a later date.

Dr. Sprigg offered an amendment that the personnel of the committee be not greater than 5 members.

Dr. Schoenfeld accepted Dr. Sprigg's amendment.

Dr. Horgan would inquire if these plans were predicated on the fact that we accept this thing that an organization of our Federal Government is undertaking.

Dr. Sprigg said that had nothing to do with this committee; that it was purely for the purpose of bringing Dr. Verbrycke's report before the Society, which report has been accepted in principle by the Executive Committee.

The Secretary said: 'It occurs to me that it might be a better idea to have this committee of 5 perhaps being constituted by members of the Executive Committee who have been fully cognizant of what has been going on and to not have this committee to be too official as representing the Medical Society. We shouldn't step that far yet. The

function of this committee should be largely that of finding points on which we might possibly agree and then finding the points on which we couldn't agree. In other words this committee is to feel out the organization and see where, if any place, they are willing to submit to arbitration or to consider some other scheme than the scheme they have now. If we can get some modification of this scheme it is my personal view that we have done a lot. Endicott Johnson had this same identical setup in New York State. The New York State Medical Society and Broome County Medical Society fought this thing tooth and nail. The result was that Endicott-Johnson did as they pleased and they give full medical care to the employees and all their families. They know about the Ross-Loos outfit in California. It was bucked by the California State Medical Society. They know about the other organizations throughout the land. Dr. Brown has that information. As I told Mr. Zimmerman the situation in the District of Columbia is different, where if this thing spreads to all government employees, which I have no doubt will be the situation, we can all realize what will happen to the practice of medicine in the District of Columbia. The seriousness of that situation means we should have a committee to go to their committee and feel out the whole thing; sift it out and get information about getting it to the Home Owners' Loan Corporation throughout the state. It is going to be widespread. My idea would be to have this carried on without this committee having any authority to bind the Society—just to find out what they will accept.

Dr. Hooe: Briefly Dr. Conklin's idea would sound all right. I am referring to that part of it relating to the choice of five men of the Executive Committee. Ordinarily that would be all right. I think this whole matter is of extreme importance. I think I see the possibility of its being ironed out if the right five men are chosen and I don't see why, in choosing those men, if there are one or two best suited for that committee—I feel we can ill afford to leave them off that committee because they are not members of the Executive Committee. I refer to Dr. Tom Groover. He ought to be on that committee. His judgment will have weight on that committee. If the Chairman could go out of the Executive Committee and be permitted to choose I would say have Tom Groover on that committee.

Dr. Schoenfeld would ask how about Dr. Verbrycke.

Dr. Hooe: Had no objections to Dr. Verbrycke serving on the committee.

The Secretary would suggest that the incoming President appoint an unofficial committee.

Dr. Hooe did not agree with the suggestion.

Dr. Thomas E. Neill was of the opinion that a copy of what was learned tonight should be sent to the membership, with a copy of Dr. Verbrycke's report, and the matter should be brought to the floor of the Society. He felt there should be no hurry.

The Secretary stated the organization was 'ready to shoot.'

Dr. Neill added, 'They are shooting with their guns half cocked.'

Dr. H. C. Macatee: There are certain things that have occurred to me that I would call to your attention. This is something that affects vitally the whole membership of the Medical Society. Certainly no committee of it would undertake to do anything that seemed to commit the Society to any position in regard to it, but I would like to express the opinion that this is not a matter of public policy. If the Medical Society of the Executive Committee were to undertake to recommend that the Medical Society endorse co-operatives of this sort as a social setup in the District of Columbia, that would be a question of public policy. If you consider that this is a question of public policy then under the Constitution we are required to send this report and any action of the Executive Committee to every member of the Medical Society before calling a meeting to consider it. It seems to me that the report and the suggestions contained in it are very tentative offers of a possible organizing interest between two existing corporations. The Medical Society has been chartered over 100 years, and this corporation is incorporated and has a legal status. We can't express any opinion as far as the public policy is concerned. If this proposal is published to the whole membership of the Medical Society it, to a certain extent, becomes a public document. Whether the Medical Society adopts it or not it becomes a public document—it can't be helped. It seems much wiser for the Executive Committee to feel out whether there is any possibility of this corporation even considering a proposal of employing the organized

medical profession as its agency for rendering the services as it promises to its people before you go to the Medical Society with anything.

Dr. Hooe: Does that mean that the committee can go to these people but not in any way commit the Society—it can't offer anything? That would appear different.

The Chairman: What is the sense of appointing a committee unless we have something to offer?

Dr. Sterling Ruffin: This committee has a right to further confer along the same lines as we did tonight—not to commit the Society—for the purpose of getting all the facts. We can then bring it before the Society and let the Society take any action it deems proper. We have a perfect right to appoint a committee—suggest the appointment of a committee of five of this committee—with authority to take with them any members outside of the Executive Committee whom they wish; that would bring in Dr. Groover and Dr. Verbrycke, if they wish to have their assistance. There is nothing wrong about that.

Dr. Schoenfeld at this point withdrew his motion.

Dr. Ruffin made a motion that a Subcommittee of five members be appointed from the Executive Committee, with authority to add to the committee any other members of the Society, to confer further with the committee of the Group Health Association for the purpose of getting all of the facts concerning the Cooperative Medical Service Plan. Seconded. Finally adopted.

Dr. A. B. Bennett pointed out that some hospitals require that the courtesy staff should be members of the American Medical Association. Dr. Brown's cooperation with the Medical would seem important. Dr. Bennett would suggest that these facts be brought to the attention of the rest of the board.

Dr. Joseph Horgan was of the opinion that they should conform to the Principles of the American Medical Association. The thing that behooves us to attack is the fact that they have admitted they are setting up a corporation with taxpayer's funds to practice medicine. I asked Mr. Penniman with what funds was this thing subsidized; he admitted that it was from the funds of the Home Owners' Loan Corporation, an agency of the Government.

Dr. Bennett pointed out that the Home Owners' Loan Corporation does not use taxpayers' money.



Dr. Horgan added: 'Essentially it is an agency of the Government. Remotely, if not directly, they are using taxpayers' money. If it were not true they would have to carry compensation policies to protect their own employees.' If the Society does not combat this plan there will be set up 'in our midst a Federal Agency unit for the corporate practice of medicine.'

The Chairman appointed the following committee: Drs. Sterling Ruffin, Thomas A. Groover, H. C. Macatee, Thomas E. Neill and J. R. Verbrycke, Jr.

It was pointed out that Drs. Groover and Verbrycke were not members of the Executive Committee. Dr. Sterling Ruffin asked not to be appointed as he was so much opposed to the plan.

The Chairman reserved the right to appoint a subcommittee at a later date.\*

Adjourned.

C. B. Conklin, Secretary.

\*Dr. Thompson appointed the following subcommittee:

H. C. Macatee, F. X. McGovern, Chairman, Earl R. Templeton, William P. Herbst, Jr., Coursen B. Conklin."

Gov. Ex. 106 is a letter from Dr. Herbst of Washington, D. C., to Dr. Olin West, dated June 25, 1937: .

"Dear Dr. West:

I wish to thank you for your very kind letter which I received a short time ago.

In regard to Sir Henry Brackenbury I will be as nice to him as I know how and see if I can find out anything that is of any importance.

We are having a great time locally here at the moment. That Group Health Service affair of the HOLC has already been incorporated and our Executive Committee had a meeting with some of their representatives last night and it certainly looks bad. It was brought out that it is possible for them to borrow money from the Home Owners' Loan Corporation when and if necessary at any time for any purpose in regard to the health problem. It was also brought out that there are about two hundred branches scattered throughout the United States which maintain emergency rooms with a nurse which are directly under the

central office here in Washington. Just what is going to come out of the whole affair is impossible to predict at this time but there are going to be some conferences in an attempt to go along with this outfit if it is possible to do so and retain our faces.

I am on my way up to the A. U. A. in Minneapolis and if I can steal any time on the way up or way back, I shall give you a call and trust that it will be possible to have a little visit with you.

With very kindest personal regards, I am,

Sincerely, William F. Herbst."

Gov. Ex. 135 is an excerpt from the minutes of the Board of Trustees of the AMA of June 29, 1937:

"Home Owners' Loan Corporation; Group Health Association, Inc.; Group Medical Service Plan (p. 294): The following paragraph from a communication which Dr. West received from a physician in Washington, D. C., was read:

"The Group Health Service affair of the HOLC has already been incorporated and our Executive Committee had a meeting with some of their representatives last night and it certainly looks bad. It was brought out that it is possible for them to borrow money from the Home Owners' Loan Corporation when and if necessary at any time for any purpose in regard to the health problem. It was also brought out that there are about two hundred branches scattered throughout the United States which maintain emergency rooms with a nurse which are directly under the central office here in Washington. Just what is going to come out of the whole affair is impossible to predict at this time but there are going to be some conferences in an attempt to go along with this outfit if it is possible to do so and retain our faces.

Doctor Woodward reported information secured from a Washington physician over the telephone and by letter concerning this matter and there was considerable discussion as to what the action of the American Medical Association should be concerning the activities of the HOLC and also concerning the proposal of the Medical Society of the District of Columbia to organize its own co-operatives. After the discussion the following actions were taken:

Doctor Bloss moved that the Editor and the Secretary and General Manager be authorized to proceed to inform

the profession of the country as to the efforts of the HOLC to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. Doctor Hayden seconded the motion and it was carried.

Doctor Hayden moved, and the motion was seconded by Doctor Bloss and carried, that Doctors Woodward and Leland be requested to go to Washington to see what they can learn and to try to advise the Medical Society of the District of Columbia if that Society is willing to accept advice."

Gov. Ex. 177 is a memorandum written by Dr. Woodward on June 28, 1937, as follows:

"About four o'clock P. M., June 28, I talked with Dr. J. Russell Verbrycke, Jr., Washington, D. C., relative to certain statements in a letter just received by Dr. West from Dr. Wm. P. Herbst, Washington, concerning the Group Health Association, Inc., organized in Washington under the auspices of the HOLC. I referred particularly to Dr. Herbst's statement that the representatives of the Medical Society of the District of Columbia who met with representatives of the Association planned 'to go along with the Association' if they could do so and save their faces. I suggested to Dr. Verbrycke that I could not see how they could go along with the Association named without violating the principles of medical ethics of the American Medical Association. His answer was in effect that they would try to work out some plan whereby they could do so. Cooperatives, he said, were already with us, and the representatives of the Medical Society of the District of Columbia thought it would be better for the Society to help organized cooperatives on an ethical basis rather than oppose the wishes of the Association named. I asked him what cooperatives he knew of, and he named the Group Health Association, Inc. I called his attention to the fact that that organization was an illegal corporation, if there could be such a thing, in that it was incorporated to engage in the practice of medicine and dentistry. Dr. Verbrycke said that representatives of the Association had said that it was not planning to engage in such practice. I told him that its charter definitely planned that it should do so. He said that representatives of the Associa-

tion had refused to furnish him with a copy of its articles of incorporation and he was much surprised when I told him that those articles were matters of public record and that I had a copy of them.

I asked him what Dr. Herbst meant when he said that there were already two hundred emergency rooms with nurses in attendance, under the direction of the central office in Washington. Whether he meant that these two hundred emergency rooms were under the Washington headquarters of the office of the Association organized under the auspices of the HOLC. He said that reference had not been made to the present existence of two hundred such emergency rooms under the Association, but ultimately the Association expected to have that number of rooms throughout the country.

Dr. Verbrycke said that he had prepared a lengthy report on the situation, which report had been approved by a subcommittee and then by the full executive committee of the Medical Society. He promised to send a copy of that report and to try to get it off by air-mail, special delivery tonight. He said, too, that minutes had been kept of the recent conference with representatives of the Association and that he would send me a copy of those minutes.

Dr. Verbrycke said that a Mr. Penniman had stated that 'they' had the same right to look after the health of their employees that any private corporation had to look after the health of its employees. I suggested that in my judgment the representative of the Corporation had done some tall bluffing in the conference, but he felt confident that that would not be the case because Mr. Penniman is a high official in the HOLC and a smart man. I suggested that that very type would do the bluffing. Dr. Verbrycke expressed a wish for cooperation by the American Medical Association, but I had to tell him that we certainly could not cooperate with his group if it did not let us know what was going on. If we had been given notice of the proposed conference with representatives of the HOLC, I might, I told him, have come to Washington to attend.

W. C. W."

Goy. Ex. 198 is a carbon copy of a letter written over the signature of William C. Woodward, dated July 2, 1937.

Dr. C. B. Conklin, Secretary, Medical Society of the D. C.,  
Washington, D. C.

DEAR DR. CONKLIN:

Did the Medical Society of the District of Columbia at its special meeting on June 30 consider the status of the medical cooperative established by employees of the HOLC? If so, will you not let me know at once the result of the Society's deliberations? Will you not send me at the same time a copy of the minutes of the meeting at which representatives of the HOLC medical service association conferred with representatives of the Medical Society regarding the proposed medical service cooperative?

Yours truly,"

Gov. Ex. 199 is a letter from C. B. Conklin to Dr. Woodward, dated July 6, 1937:

DEAR DR. WOODWARD:

At the special meeting of the Society held on June 30 the matter of the medical cooperative for the Home Owners' Loan Corporation was not discussed. Arrangements have been made, as you will see, in the transcript of the minutes of the joint meeting with representatives from the Home Owners' Loan Corporation for a committee from the Society to meet with representatives of the cooperative project at a future date. Dr. F. X. McGovern is the chairman of the committee from this Society.

Assuring you that it will always give us pleasure to keep your office fully apprised of any future developments, I am

Sincerely yours, C. B. Conklin."

Gov. Ex. 37 read from to jury as follows:

"Minutes of the meeting of the Executive Committee of the Medical Society of the District of Columbia, dated July 12, 1937.

Present: Drs. Borden, Chipman, Holden, Hooc, Macatee, McGovern, Neill, John A. Reed, E. Hiram Reed, Ruffin, Schreiber, Templeton, Yater, Conklin, and \*Preston, \*Sprigg and \*Wells.

(\*) In attendance after the meeting started.

Dr. F. X. McGovern, Chairman of the Subcommittee that was appointed to confer with representatives from



the Group Health Association, Inc., was recognized. He made a motion that his report be given preference over the other agenda for this meeting, and that it be heard at this time. Duly seconded and adopted.

For the information of the new members of the Executive Committee, Dr. McGovern outlined the prepayment medical care plan that has been set up by the HOLC, stating that the Executive Committee had appointed a subcommittee to meet with the Committee on Medical Economics to study the prospectus and bring a report back to this committee. A report, which was prepared by Dr. J. Russell Verbrycke, who was then the Chairman of the Committee on Medical Economics, was approved in principle by the Executive Committee at a subsequent meeting. Since that time the subcommittee has met and studied and reviewed supplementary plans by Dr. Verbrycke, which Dr. McGovern offered as a report to the Executive Committee tonight.

Dr. Macatee interpolated, for the information of the new members of the Executive Committee, that upon the adoption in principle of the report of the Subcommittee, the Subcommittee was given instructions to negotiate on the basis of that report with the medical service corporation, and this supplementary report is now made to gain alternative instructions.

(Copy of Dr. Verbrycke's letter, dated July 12, 1937, appended hereto.)

The Secretary made a motion that this letter be accepted as the report of the Subcommittee and be approved in principle."

Mr. Lewin. It was adopted as the report of the committee, and it is by Dr. J. Russell Verbrycke.

"July 12, 1937.

Dr. F. X. McGovern, Chairman, Special Subcommittee of the Executive Committee on Cooperative Medical Care.

I have no longer any official status, but I am deeply interested in the entire subject, and since I was the author of the original report which has been approved in principle by the Executive Committee, I ask your leave to sub-

mit some further thoughts with the hope that they may be of some slight help.

The present HOLC corporation is only a minor consideration: (a) Either innumerable others will follow or (b) a large all-embracing organization will succeed all smaller enterprises. The first eventuality is not of great concern to us. Competition will kill them and since they cannot be large enough to supply a proper quality of medical care or hospitalization on their own account subscribers will gradually withdraw. Also the Medical Society by its present control over its members, and through them of the hospitals can adequately fight (if it is so desired) these small units. (Various methods which are more or less practical will be later detailed.)

However, if the second eventuality should occur, and one single large cooperative to take in all government employees should be formed, the considerations are entirely different and we must be prepared to admit the following:

1. With size and a single large cooperative its financial success is assured.
2. It can secure enough personnel of good quality, even if not the best, either local or imported, to assure its success from the patients' standpoint.
3. Its own medical center and hospital can be obtained.
4. It is not unlikely that a responsible organization could borrow all the money needed, even into the millions, through one of the administration agencies, such as P. W. A., just as many other projects have, without such an act making it a federal enterprise.

The Medical Society must therefore adopt a definite policy toward the cooperative movement as a whole, and at once, without wasting a great deal of time on the HOLC project. The alternatives of policy are primarily:

1. Approval of cooperatives as at present outlined.
2. A laissez-faire attitude of seeing what will happen.
3. Disapproval and active combat with all measures at our command.
4. Disapproval of all other plans and the offer of prepaid medicine through the Medical Society (a) either as a

Society subsidiary or (b) through a change in the Medical-Dental Service Bureau.

The first of these, approval, is manifestly an impossibility. The second alternative threatens through inertia more than any other factor.

Active opposition is possible at present. Whether it is advisable is another matter, unless some substitute plan can be suggested. Failure to place the cooperative on the approved list of the Medical Society would automatically forbid any consultations by members of our Society. Any fulltime employees of the corporation could probably easily fail to be put on the courtesy list of the hospitals for one reason or another without the fact of his connection with a cooperative being even mentioned. In fact any combative method would necessarily have to be camouflaged to the nth degree.

The original plan submitted to the Executive Committee envisioned the aid of the Medical Society in the formation of the cooperatives along ethical lines and their continuous active supervision, insisting above all upon free choice of physicians. All cooperative corporations would be financially and administratively independent except for the control exercised by the Central Board elected by the Medical Society.

It would now appear that a better plan might be a much more ambitious one, namely, the formation of our own complete organization for the distribution of prepaid medical care as a distinct unit competitive with any other organization that may be formed.

This is the plan which Dr. West made it clear he favored as having the greatest chance of success. He made the further suggestion that our own Medical-Dental Service Bureau could be changed to take over the plan. I believe that none of us had previously thought of this solution and I personally believe that it has great possibilities.

The Bureau has done great work in allowing patients to budget their medical, dental and hospital care. It has also acted as the clearing house for the Central Admitting Bureau partial-pay patients. It has just about broken even on the 10 per cent allowed but it would not have been able to carry on had it not been for the C. A. B. business."

That is Central Admitting Bureau, I suppose.

"The Bureau has about reached its peak of volume of work and it would appear that various factors might tend to start it on the down grade. Therefore, it would seem that our having a working organization with personnel, quarters, etc., which might with the necessary changes function at any time, is a most fortunate thing.

Group Hospitalization is also vitally affected by the inception of cooperative medicine.

May I offer the earnest suggestion to your committee that you request a joint meeting with the Board of the Medical-Dental Service Bureau and the Board of Group Hospitalization, Inc., with a view to discussion of the factors affecting all and the possible formation of definite constructive plans.

Very truly yours, J. Russell Verbrycke, Jr."

Thereupon the Government requested a ruling on Gov. Ex. 292, being a copy of a letter from Verbrycke to McGovern dated July 12, 1937.

The Court: I understand this is simply to bring home knowledge to Woodward of the contents of this.

Mr. Kelleher: Yes, your Honor.

The Court: Is there anything to show how it got to him?

Mr. Leahy: Here—

Mr. Kelleher: Well, just a second. The stamp appears on there; and you will notice in Exhibit 177, which I just read, he requests information, requests that he be kept posted, and the memorandum says that he requests Verbrycke to keep him posted, and Verbrycke wrote this.

The Court: Oh.

Mr. Kelleher: Yes, Verbrycke wrote that.

The Court: What did the young lady say? Did she indicate in her testimony that this was actually signed by Dr. Woodward?

Mr. Leahy: No.

Mr. Kelleher: She did not. She testified, though, that that is Dr. Woodward's stamp which is used.

Mr. Leahy: Well, the stamp is in his office; it isn't Dr. Woodward's stamp.

Mr. Kelleher: That is right. She testified he would stamp them.

Mr. Leahy: Oh, no, she didn't. No, she didn't.

Mr. Timberlake: She testified all his mail was stamped.

Mr. Leahy: The mail was stamped just as the mail downstairs is stamped.

Mr. Kelleher: Even accepting that, that that is his stamp.

The Court: Yes. Well, that was my recollection.

Mr. Kelleher: Well, here is the letter in which he requests all information, your Honor, the memorandum which I have just read. He does not request it specifically.

The Court: You have nothing to show how this came about?

Mr. Kelleher: Well, except the circumstances in the file. It is his stamp, it is a copy of the minutes, and he requests a report on what the Society is doing. His very last sentence of that is—

The Court: What date is the letter?

Mr. Kelleher: This is June.

Mr. Timberlake: That is from the Board.

Mr. Kelleher: June 28.

Mr. Timberlake: That is also from the board, if your Honor please.

Mr. Leahy: Which report are you reading from there now?

Mr. Kelleher: This is the exhibit I read, Mr. Leahy, Exhibit 177, in which Verbrycke states that he will send him his—

The Court (interposing). The jury will be excused for five minutes.

(At this point the jury was excused from the courtroom.)

Mr. Kelleher: Note, your Honor, that in this memorandum Woodward reports that Verbrycke had already prepared a lengthy report on the situation, which he had agreed to send to him, and he said in the last sentence "that we certainly could not cooperate if he did not at least let us know what is going on."

Mr. Leahy: That is the Verbrycke report that we have already read before.

Mr. Kelleher: That is right.

Mr. Leahy: It is not this one.

Mr. Kelleher: I am not claiming this specific report is asked for, but he asks him for all information.

The Court: I am inclined to think that there are circumstances enough to justify the admission of it.

Mr. Leahy: Well, I don't see where there is anything in there, if your Honor please, upon which there is a reason—



able inference that it came to Dr. Woodward's attention.

The Court: It was undoubtedly in his office.

Mr. Leahy: Could I see the copy of it? I have never seen one.

The Court: And then you have these indications of Dr. Woodward's interest in the matter and of his interest in Verbrycke's report, and that sort of thing.

Mr. Richardson: He asks that information be sent him.

Mr. Leahy: But that is another report he is referring to, but it is not that one.

The Court: But it seemed to be.

Mr. Richardson: Would a request for information carry all possible information that would come in that bears a stamp on the letter, without any proof it ever got to Woodward?

Mr. Kelleher: When he asks for it, it should.

Mr. Richardson: When he asks for information, everything is information: he might have sent him the Encyclopedia Britannica.

The Court: Yes. My impression is that Dr. Woodward has manifested a very lively interest in this subject; there is no question about it. This letter treated as a report of a subcommittee, this letter of Verbrycke's that has just been read here.

Mr. Richardson: That is right.

The Court: Which made it a matter of importance. He has been requested to be kept advised of what goes on here in Washington with the local association.

Mr. Richardson: That is right.

The Court: Soon thereafter. The date is here. What is that? September 1? Can you make that out? Is it September 1?

Mr. Richardson: What was the other date?

Mr. Kelleher: July 12.

The Court: Well, I know, but what is the date of your meeting?

Mr. Kelleher: July 12, your Honor, is the meeting.

Mr. Leahy: July 12. What is the date of that stamp down there?

Mr. Richardson: July 12th.

Mr. Leahy: What is the date of that stamp down there?

The Court: What is that?

Mr. Kelleher: September 1.

The Court: Well, that report has undoubtedly come from the file; those files. I am inclined to think you have got circumstances enough there to argue that he had knowledge of it. If that is true, then it is admissible. I will admit it.

Thereupon the Government made the following statement:

Mr. Kelleher: Exhibit 292 is a copy of the report which Mr. Lewin has just read, which is from the files of the AMA and bears on it the stamp, "File, Sep. 1, 1937, W. C. C.", and one of the girls in his office testified that it was the stamp placed on the mail received in his office.

I shall now read Exhibit 152, which is an original letter from the defendant Olin West to Dr. Verbyrycke, dated July 12, 1937:

"DEAR DOCTOR VERBYRYCKE:

Our telephone conversation this morning was not altogether satisfactory for the reason that I could not hear you very well.

Since the meeting held at the Metropolitan Club in Washington the other evening, I have given a little more thought to the matters that were discussed and have come to the conclusion that I offered one suggestion for the consideration of the Medical Society of the District of Columbia that it was not altogether wise to offer. I stated, in effect, that if I were a member of the committee of the District Society, I should want to consider the advisability of organizing a sort of cooperative movement under the auspices of the society to offset the effect of the cooperative movement that is now being promoted by certain agencies in Washington. Having thought the matter over more carefully, I have come to the conclusion that that was a poor suggestion to offer, for the following reasons:

First, I do not believe that the District society could organize any sort of cooperative scheme without establishing a relatively low income limit for those who might be included among the beneficiaries of the scheme. It is my understanding that the so-called HOLC cooperative does not intend to establish any particular income limit, but that the higher paid officers among the employees of that corporation are to be included in the cooperative scheme. Certainly the District society could not afford to undertake any sort of plan under which persons enjoying relatively large incomes

would be included. Secondly, if the Medical Society of the District of Columbia should attempt to organize and operate a cooperative movement, it would at once give endorsement to the principle of collective bargaining, which, in my opinion, can not be properly applied to medical service.

Since I returned to the office this morning I have talked with Doctor Woodward and with Doctor Leland, both of whom expect to arrive in Washington on Wednesday morning in the hope that they may be able to be helpful in some way to the committee of the District Medical Society. Doctor Woodward seems to be inclined to believe that the co-operative movement now being promoted in Washington might be successfully opposed on the ground that when it goes into operation it will be a corporation engaging in the practice of medicine. As you know, court decisions in several states have specifically declared the practice of medicine by a corporation to be illegal.

I was delighted to see you while I was in Washington and to have the privilege of meeting with the members of the group at dinner at the club. I am sorry indeed that I could not offer some suggestion that might be more helpful to your committee, but I hope that Doctor Woodward and Doctor Leland will be able to be of some assistance.

With most cordial good wishes, I am,

Very truly yours, Olin West."

The Government continued reading from the minutes of the Executive Committee of the Medical Society of July 12, 1937, excerpts as follows:

"Dr. Hooe—He thought the plan discussed with Dr. West offered great possibilities.

Dr. McGovern, in answer to why the Subcommittee had not met with the Group Health Association representatives up to this time, said that his committee did not feel that it was ready to meet until it had something concrete to offer. He stated that within the past week Dr. Olin West, Secretary of the American Medical Association, was in the city and met with the committee and it was felt that very important information was obtained through this meeting. He added that he had a telegram from Dr. West, stating that Drs. W. C. Woodward and R. G. Leland (the latter Director, Bureau of Medical Economics) of the American Medical Association would be in Washington Wednesday morning of this week.

Dr. Thomas E. Neill pointed out that the subcommittee was appointed on June 30. The Chairman of the committee as constituted did not accept the appointment and Dr. Neill appointed a new chairman, Dr. McGovern, to take the place of a member who did not want to serve. He was of the opinion that the committee should have something concrete to offer when they meet the representatives of the Group Health Association. He said he gained, personally, a lot of information from the conference held with Dr. West. He felt that the subcommittee should meet with the Board of Trustees of the Health Association and then in the fall, at the first business meeting of the Society, some concrete recommendation could be adopted."

Dr. R. Arthur Hooe, as chairman of the Compensation, Contract and Industrial Medicine Committee, would call attention to the fact that by fall this thing (Group Health Association, Inc.) would be running very smoothly. He felt that there was no time to lose in dealing with the matter. Dr. Hooe was of the opinion that the subcommittee should do its work and do it promptly, and come back with something definite to the Executive Committee to recommend to the Society at a meeting to be called.

At this point Dr. Ruffin suggested that, for the benefit of Dr. Sprigg, the portion of the report of the Subcommittee dealing with the recommendations be read. This was done by Dr. McGovern.

Dr. McGovern added that his committee did not know just what the attitude of the Executive Committee of the Society would be; whether to fight this thing with the weapons at hand or possibly set up an organization to combat it. The committee felt that some definite instructions should be given along that line.

The Chairman said it was his understanding that the subcommittee had the authority to meet with representatives of the HOLC for the purpose of getting from them all of the data they could; not to go to them with any plan or proposition but to get information and to bring it to the Executive Committee and the Society for approval.

The Secretary at this point at the request of Dr. McGovern, read 'Suggestions for agenda for joint meeting of the Subcommittee of the Executive Committee of the Society, with the Committee from the HOLC.' (Copy appended hereto.)

The Chairman, for the benefit of the committee, stated that he had information which would indicate that the Ross-Loos plan, which split the California State Medical Society, was not progressing so well; that the wind was blowing the other way. He was informed that the Ross-Loos Corporation was resorting to other means of business to make up their deficit.

Dr. Macatee pointed out the fact that the Group Health Association itself was a small group, but there were possibilities of it involving other federal employees.

Dr. Hooe said he was of the opinion that when this subcommittee goes to the representatives of the Home Owners' Loan Corporation it should carry nothing binding upon the Society. He pointed out that what is done in the Executive Committee is not binding upon the Society. He would suggest that an early meeting of the Society be called to present the proposition. He thought the consensus was that the corporation as it now stands would not be countenanced by the Society. He felt that there were so many substitutes that could be offered and therein lies the one hope for defeating the plan."

I would omit page 4. Do you want it read?

Mr. Leahy: Yes.

Mr. Lewin:

"The Secretary stated that when the subcommittee goes down to meet the representatives of the Group Health Association there was no one better than Dr. Macatee to be the spokesman and the rest of the committee should be observers.

Dr. John F. Preston would inquire if there was anything in the setup which would allow the Home Owners' Loan Corporation to put their money in such an enterprise?

Dr. Macatee said that he was talking to a patient who was an attorney in the corporation and he said it could be done perfectly legal, and if his recollection was correct, that the papers had gone over this attorney's desk. They could do anything not contrary to the law and constitution for the benefit of their employees. In respect to the duties of the subcommittee, Dr. Macatee pointed out that according to the letter which was addressed to the members of the Group Health Association, that it was clear that at least



one medical man had made a contract with the group, and that they are on the verge of going into action. 'It had been thought by the Subcommittee that we could probably go before the Trustees and we could ask them what their prospectus meant when it said that they wished to enter into the fullest cooperation with the Medical Society of the District of Columbia, to ask for representation on their board in an advisory capacity, and they wished to do their work in an harmonious way. We thought we might say to the Board of Trustees that the Medical Society had looked upon the organization with some concern and that we wondered if the Trustees sensed the threats involved to the success of their enterprise by the fact that their subscribers would not in the long run have the free choice of physicians. Whether they understood that as soon as some grave medical problem arose among the employees they would not follow the usual human instinct and say, "We don't want these hired men, we want the best;" whether that would not be disruptive of the whole plan. The Trustees are laymen . . . . Whether in view of those facts and other facts they might not feel that the principles of organized medicine, that the free choice of physician is essential to the success of any proposition, that may convey something looking to the entire medical profession of the District of Columbia as a source of the medical and surgical service they may need. If they could consider that we would be glad to take it up with the Medical Society and see what could be worked out. It is for this committee to decide whether it is likely that any good will come from such a meeting.'

The Secretary was of the opinion that the Subcommittee should be sent down to ascertain the facts and have Dr. Macatee speak along the lines which he just did. The lay members of the Board of Trustees would in all probability immediately understand that they haven't anything comparable to what the Medical Society may possibly offer in these few \$3,000.00 a year men they may be able to pick up outside of the organized medical profession. Further, Mr. Penniman, Mr. Zimmerman and Dr. Brown were given to understand that a committee would be glad to meet with them. I felt it would be undiplomatic to back out now.

Dr. Ruffin offered an amendment to Dr. Conklin's motion to the effect that the Subcommittee, of which Dr. F. X. McGovern is chairman, be instructed to present arguments.

along the lines just outlined by Dr. Macatee and bring back a report to the Executive Committee with a view to a meeting being called of the Society at an early date.

Dr. Hooe suggested to incorporate in the amendment the time for the meeting of the committee and the Society—in the very near future.

At this point Dr. Conklin and Dr. Ruffin withdrew their motion and amendment.

Dr. Macatee made a motion to the effect that the supplementary report of the Subcommittee be received and be held on the table for future consideration, after the report of the Subcommittee. Seconded and adopted.

Dr. Ruffin made a motion that the Subcommittee be instructed to meet with the Home Owners' Loan Corporation representatives, to be addressed by Dr. Macatee along the lines discussed, and bring a report back as promptly as possible to the Executive Committee with a view to a meeting of the Medical Society. Seconded and carried.

Dr. Wallace M. Yater would offer an amendment to the effect that the Subcommittee bring back its report after it confers with the HOLC representatives and also after it has had sufficient conference with Drs. W. C. Woodward and R. G. Leland. In fact Dr. Yater felt that the Subcommittee should confer with Drs. Woodward and Leland before and after they go to the HOLC to get advice as to how to proceed. No second to this amendment.

Dr. Ruffin was of the opinion that it could be left to the committee to do this without any specific instructions.

At this point Dr. F. X. McGovern, Chairman of the Subcommittee of the Executive Committee appointed to prepare an approved list of organizations, groups and individuals, engaged in the practice of medicine within the District of Columbia, in accordance with Chapter IX Article IV, Section 5 of the Constitution, was recognized. He read the provision of the Constitution as follows:

No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Dr. McGovern stated that he requested the various county medical societies in Virginia and Maryland, within 10 miles of the District of Columbia, to send him a list of their membership. He was not very successful by letter and intended to contact the Secretaries personally. He added that there were a few physicians practicing medicine in the District of Columbia who were not on the rolls of the Society. The Society's office was busy at the present time checking the list of physicians and surgeons as classified in the newest telephone directory and the Commission on Licensure had been approached to obtain a list of all licentiates in the District of Columbia.

The Chairman, Dr. Sprigg, stated that he requested a list of the licentiates and the Society's office was informed that the records of the Commission on Licensure would be available if the Society could supply clerical help to type the list.

Dr. McGovern read a proposed list of approved organizations, groups and individuals.

Dr. Macatee suggested that the words 'employed by' be substituted for the words 'connected with' in item 10. With this change the list was approved, upon motion, duly seconded and adopted, as follows:

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i. e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following compensation clinics:

Operated by:

Farragut Medical Clinic	Frank M. Gantz, M. D.
First Aid Station	Arch L. Riddick, M. D.
Harry M. Lewis Clinic	Harry M. Lewis, M. D.
Market Compensation Accident Clinic	M. J. Kossow, M. D.
Northeast Insurance Clinic	G. Henry Rawson, M. D.
Union Market Workmen's Compensation Clinic	Maxwell Hurston, M. D.
Washington Industrial Accident Clinic	Edward Clark Morse, M. D.
Washington Medical Building Workmen's Clinic	Charles S. White, M. D.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored medical society).

12. Membership of the Robert T. Freeman Dental Society (colored dental society).

Dr. Raymond T. Holden, Jr., inquired as to the personnel (medical) of the proposed Group Health Association, Inc.

Dr. Hooe pointed out that it was a separate individual corporation and would have to be approved as a single unit. As a matter of information, Dr. Hooe would inquire if he was right in the assumption that this approved list

would not have to be submitted to the Society but from tonight on would be filed in the Secretary's office for reference.

The Chairman ruled that according to the wording of the Constitutional provision that would be the understanding.

Dr. Hooe made a motion to the effect that the Secretary of the Society be directed to write a short letter to every member of the Society, calling attention to this constitutional amendment, quoting it in the letter, and informing them that the approved list (which shall be added in the letter) is now available in the Secretary's Office and is in force; and further that any violation thereof they will be liable for. This letter to be sent registered mail. Seconded.

The Secretary offered an amendment to the above motion to include that the list as read by Dr. McGovern tonight be enclosed, and not the individual names of physicians. Seconded and accepted.

. . . . .

Suggestions for Agenda for Joint Meeting of Committee Representing the Executive Committee of the Medical Society of the District of Columbia, with the Committee from the Home Owners' Loan Corporation

1. Attempt to be made by pointed questions to obtain a copy of written contract between the H. O. L. C. Medical Service and its clients.

2. The establishment of attitude of H. O. L. C.; should the Medical Society of the District of Columbia offer to furnish in its entirety, through its members, allowing free choice of physician, the entire proposed medical service, regular and consultant.

3. Would the H. O. L. C. consider giving up its present preparations for giving medical service through full-time \$3,000.00 per annum doctor employees should the Medical Society advocate the enlargement of the facilities that are already at hand in its Medical-Dental Service Bureau, for the purpose of taking care of large groups of Governmental employees, on a mutually approved prepayment plan?



## General Impressions as to Proper Methods of Carrying on the Joint Meeting

1. Before the date of the meeting, objectives should be definitely determined and mutually agreed upon by all committee members.

2. Such propositions are to be offered, with the thought in mind that they are but tentative and are but 'feelers,' should be done in an orderly manner and by selected spokesmen.

3. There should be no general speaking by all members of the committee, as this but leads to confusion and to perhaps defeat of the attainment of some definite objectives.

Finally, the committee should be guided by words of wisdom that were given by Dr. Olin West at a recent meeting, and should be governed by what has actually taken place throughout the states, i. e., in the way of prepayment plans advocated, installed, and successfully operated by components of state medical organizations. In other words, there should be no denying of what has definitely taken place. The teachings of experience should be weighed against the visionary and impractical promulgating of views and attitudes established by organized medicine, which in many instances constituent bodies have flauntingly discarded. The turning of public opinion against the California State Medical Society in its fight against the Ross-Loos Clinic is well worthy of thought. It would seem that in the Nation's capital that any active campaign by organized medicine for the purpose of denying the present organizers the use of their personnel might have, to say the least, very undesirable implications. The utmost diplomatic handling is required."

Mr. Lewin: I think it would be proper for me to call the Court's attention to the fact that was the agenda for the meeting at the Home Owners' Loan Corporation, the minutes of which were fully read to the jury.

Mr. Kelleher: That was July 26th.

Mr. Leahy: I have just one suggestion to offer with reference to the letter of Dr. Verbrycke dated July 12, 1937, which was appended to the minutes just read by counsel. I take it that the motion which was made later on to table

the letter refers to that as the supplementary report of the subcommittee; I have it on page 8. Dr. Macatee made the motion to the effect that the supplementary report of the committee be received and be held on the table for future consideration. That motion was seconded and adopted.

Mr. Lewin: I think that is true. I think it was adopted as the report, and then held over for further consideration.

Mr. Leahy: But it was not adopted.

Mr. Lewin: Oh, yes; and that was tabled for further consideration, and it was sent to the A. M. A.

Mr. Leahy: But it was not adopted.

Mr. Lewin: Well, it was moved and seconded.

The Court: You speak of it as being adopted. It was adopted by the subcommittee as the report.

Mr. Lewin: Dr. McGovern presented it to the committee as a report of his subcommittee.

The Court: Then what became of it?

Mr. Lewin: Then it was tabled for further consideration.

The Court: I think that is right.

The Government then read Gov. Ex. 153, a carbon copy of a letter from Dr. West to Dr. C. B. Wright, dated July 14, 1937:

"DEAR DR. WRIGHT:

I had a long conference with a committee of the Medical Society of the District of Columbia about the cooperative movement that is being promoted by groups of government employees. The District Society is apparently very much agitated about this matter, but as a matter of fact, there was very little that I could offer them in the way of suggestions as to what they might or should do. In accordance with authorization given by the Board of Trustees, I have asked Dr. Woodward and Dr. Leland to go to Washington for the purpose of conferring with the Medical Society and they are to have a conference with official representatives of the Society in Washington today.

There seems to be a lack of authentic information concerning the exact nature of the cooperative movement. A man in rather high official position in the HOLC was quoted in Washington as having specifically stated that the HOLC is not to finance the cooperative movement. Information from other sources, however, is exactly to the contrary.

Nobody has as yet been able to get a copy of the contract that may exist between the cooperative organization and the HOLC, nor has anyone been able to get a copy of the contract that will be entered into between the cooperative and those who purchase its contract. I was told that 2000 or more government employees have already signed up as members of the cooperative, and a few minutes later I was told by a Washington physician that employees in certain departments had refused to have anything whatever to do with the movement. It seems almost impossible to get information in Washington that you can tie to. I have never in all my life seen such a situation as now exists. I think Dr. Woodward has about come to the conclusion that the only way to fight the cooperative movement among government employees is to wait until the facts can be definitely discovered and then resort to court procedure in an effort to have the cooperative declared a corporation engaged in the practice of medicine. I am not yet come to any definite conclusion in my own mind as to whether or not this would be a wise procedure."

Gov. Ex. 178 is a telegram from Dr. Woodward to Dr. Verbrycke dated July 13, 1937:

"Leland and I arrive Capital Limited Wednesday stop Leave it to your judgment to arrange a conference at which all essential persons will be present stop It will apparently be necessary for the Society to employ counsel to guide it and presence of that counsel at conference is essential stop If regular counsel is not available his representative or other counsel should be present stop so that we can leave Washington not later than Thursday afternoon, July 15 stop Time of conference immaterial to us. We shall be at the Mayflower.

William C. Woodward."

Gov. Ex. 200 is a memorandum from Drs. Woodward and Leland to Dr. West, dated July 16, 1937:

"A prospectus for a plan for a Cooperative Medical Service on a periodic payment basis for Federal employees and their families in Washington was circulated sometime ago. The prospectus is not dated and the time of its issue is unknown. It was circulated anonymously. The plan proposed was to make available to Federal employees in Wash-

ington, and to their families, adequate medical care, both preventive and curative; to provide this care at a moderate cost; and to place that cost on a regular, budgetable basis within the means of the group to be served.

A certificate of incorporation for the Group Health Association, Inc., was executed February 19, 1937, by W. F. Penniman, R. T. Berry and Pearl B. Murphy, and subsequently recorded in the office of the Recorder of Deeds of the District of Columbia.

W. F. Penniman is one of the assistant general managers of the HOLC and has charge of District No. 6. The occupations of R. T. Berry and Pearl B. Murphy are unknown, but it is understood that they are officers or employees of the HOLC.

An amendment to the articles of incorporation was executed April 21, 1937, for the sole purpose of increasing the number of Board of Trustees, and the amendment was filed in the office of the Recorder of Deeds for the District of Columbia.

The association is organized as a corporation not for profit. Membership is limited to employees of any branch of the United States Government other than officers or enlisted men of the United States Army and Navy. Nothing in the articles of incorporation limits the Association's activities to the District of Columbia.

Among the purposes of the Association are the following:

(1) To provide the service of physicians and other medical attention and any and all kinds of medical, surgical, and hospital treatment for the members of the Association and their dependents.

(2) To furnish all forms of hospital service to members of the Association and their dependents.

(3) To construct a clinic and medical office building.

(4) To construct and operate a hospital for members of the Association and their dependents.

(5) To operate a drug store or pharmacy and to provide drugs and remedies for members of the Association and their dependents.

(6) To provide nurses for members of the Association and their dependents.

(7) To give to members of the Association and their dependents all forms of care, treatment, or attention that may be required by the sick or in the prevention of disease.

The articles of incorporation are silent as to the sources from which the Association is to obtain funds for organization and operation, except in so far as they say that the corporation is to have no capital stock but is to be an association controlled by its members and that all members whose dues have been paid if and when the Association is liquidated shall have the right to share in the distribution of its assets.

The prospectus referred to above says that the plan should be launched and publicly announced at a dinner or other similar meeting at which representatives of the press should be in attendance, and that immediately thereafter all Federal employees should be informed of the plan through meetings and circulars and should be asked whether they would be willing to participate. If the response was favorable, the campaign was to start to obtain the necessary capital through advance payment of 'enrollment fees.'

It is understood that a meeting of some kind was held by the organizers of this movement at which, it has been alleged, Secretary of Labor Perkins, Secretary of Agriculture Wallace, and Secretary of the Interior Ickes, and other prominent government officials were present. This however, was apparently not the meeting referred to above, and so far as is known, no public announcement has been made of the organization of the Group Health Association.

It is understood that membership so far has been limited to officers and employees of the Home Owners' Loan Corporation.

The Home Owners' Loan Corporation, according to an announcement sent over the signature of Mr. Penniman, President, and R. T. Berry, Secretary-Treasurer, April 15, 1937, has entered into a contract of some kind with the Group Health Association, Inc. The announcement reads in part:

'Under the terms of the contract between your association and the HOLC two persons are selected by the Federal Home Loan Bank Board who shall serve on the Board of Trustees.'

The existence of such contract and the control of the Association by the HOLC through the Federal Home Loan



Bank Board is shown by an announcement subsequently issued by W. F. Penniman, and R. T. Berry, said notice having been issued, it is believed, sometime during the first ten days of July, in which it is said:

'The by-laws of the Association have been adopted by the Board of Trustees of the Group Health Association and approved by the Federal Home Loan Bank Board.'

It is understood that the Home Owners' Loan Corporation has aided and is aiding to finance the launching of the Group Health Association, Inc., through a loan or loans, and through a contract or contracts whereby the Association, through its officers will undertake to perform certain services for the Home Owners' Loan Corporation, but the nature of those services is not known. All efforts to procure a copy of the contract agreed upon between the Home Owners' Loan Corporation and the Group Health Association, Inc., have been unsuccessful. It has been stated by Mr. W. F. Penniman, an official of the Home Owners' Loan Corporation, and president of the Group Health Association, Inc., that the Home Owners' Loan Corporation has appropriated an initial sum sufficient to carry on the Association for two years because of some hypothetical benefit the corporation is to obtain from the activities of the association. Furthermore, when asked whether the Home Owners' Loan Corporation could not, for purposes of study of health, appropriate money to the Group Health Association, Incorporated, and whether the corporation could not appropriate for services rendered, or appropriate in case of emergency without any government supervision, Mr. Penniman admitted that that was the case.

The Group Health Association, Inc., is obnoxious to law for the following reasons:

(1) It proposes to practice medicine through physicians hired by it, although the Association is not licensed to practice and could not be so licensed.

(2) It proposes to practice dentistry through dentists hired by it, although it is not licensed to practice dentistry and could not be so licensed.

(3) It is engaged in the business of insurance, without so far as available records show being qualified to engage

in such activities. It is obnoxious to public policy for obvious reasons."

Gov. Ex. 45 is a mimeographed copy of a letter signed by C. B. Conklin, Secretary, on the letterhead of the Medical Society, dated July 29, 1937, to "Dear Doctor:"

"It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article IV, Section 5 of the constitution, quoted in full.

You are particularly urged to submit to the Compensation Contract and Industrial Medicine Committee, pursuant to the constitution, any and all contracts, written or verbal, under which you may contemplate giving your services.

Very truly yours, C. B. Conklin."

The second page of Gov. Ex. 45 is a mimeographed letter from Dr. Conklin dated July 29, 1937, to "Dear Doctor":

"Pursuant to action of the Executive Committee, held on the evening of July 12, 1937, and in fulfillment of Chapter IX, Article IV, Section 5 of the constitution, your attention is hereby called to the list of organizations, groups and individuals herewith enclosed. The approved list is on file with the Secretary's office. The amendment is now in force. Any violation thereof will make a member liable according to the provisions of the constitution:

Chapter IX, Article IV, Sec. 5:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing pro-

professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Very truly yours, C. B. Conklin, M. D."

The Government then stated there is attached to Exhibit 45 a list of organizations approved by the Committee on July 12, 1937.

Gov. Ex. 201 is a letter from Dr. Woodward to Dr. F. X. McGovern, dated July 26, 1937:

"DEAR DR. MCGOVERN:

I shall appreciate it very much if you will let me know what the Medical Society of the District of Columbia or your subcommittee has done, and what its present plans are with respect to the Group Health Association, Inc. The situation is one in which the entire medical profession of the United States has a deep interest, and I would like therefore to be kept in as close touch with it as is possible.

Yours truly, William C. Woodward."

Gov. Ex. 179 is a carbon copy of a letter from Dr. Woodward to Dr. McGovern dated July 17, 1937:

"DEAR DR. MCGOVERN:

In compliance with your request, I send you herewith (1) the articles of incorporation of the Group Health Association; (2) a copy of the prospectus sent out by the promoters of that association; (3) the notice sent out by William F. Penniman, president of the association, with reference to the first meeting and election of officers, and (4) a report sent out by the same party concerning the activities of the Association.

I have retained the original certified copy of the articles of incorporation and have made and retained copies of the prospectus, the call for the first meeting and the subsequent report.

If there is anything I can do with respect to this matter, please call on me.

Yours truly, ———, Director."

Gov. Ex. 37 read to jury as follows:

"Minutes of a special meeting of the Executive Committee of the Medical Society, dated July 27, 1937.

Dr. Wm. Sprigg, Chairman, presiding.

Present: Drs. C. N. Chipman, A. C. Gray, Raymond T. Holden, Jr.; R. Arthur Hooe, F. X. McGovern, John F. Preston, John A. Reed, Sterling Ruffin, Henry R. Schreiber and C. B. Conklin. H. C. Macatee.

. . . . .

Dr. F. X. McGovern, Chairman of the Subcommittee, that had been appointed to make contact with the HOLC Medical Unit, now was called upon to make a report.

He opened his remarks by stating that pursuant to recommendations made at the last special meeting of the Executive Committee, he had prepared a letter which was sent to Mr. William F. Penniman. In the letter request was made for copies of (1) contract with the HOLC; (2) adopted constitution and by-laws; (3) form or forms of application for membership; and (4) any form of contract or agreement setting forth the service to be rendered to members and their dependents.

Dr. McGovern stated that Mr. Penniman had not given him a written answer. He had called him up and asked that he have luncheon with him at the Raleigh Hotel. On this occasion he frankly stated that he would give responses to the questions asked in the registered letter that had been received. The copy of the contract asked for, he said, he would have to refuse to exhibit. He thought the Medical Society's asking to see this contract was quite similar to going to Garfinckel's department store and asking them to show the contract they had with some firm with which they were doing business.

Dr. McGovern then proceeded to read a prepared report, as follows:

'Known Facts in re the Home Owners' Loan Corporation:

1. Corporation—Group Health Association, Inc.

2. In Home Owners' Loan Corporation with which it has a contract.

3. Mr. W. F. Penniman is president; Mr. R. T. Berry is secretary; Dr. Henry Rolf Brown is Medical Director.

4. Instituted presumably to give medical care (complete) to any and all members of the HOLC who may care to join in.

5. Nonprofit, voluntary, prepayment insurance organization.

6. Must be in some way related, possibly by contract to Home Loan Bank Board.

7. President, Mr. Penniman, avoided replying by letter to an official letter from the Society to him.

8. Mr. Penniman refused to give your committee a list of physicians employed by corporation.

9. Articles of incorporation so worded that all Federal employees, except Army and Navy may belong.

10. President, while he states that purpose of the corporation is to provide medical service to low-income individuals, at the same time admits that constitution and by-laws do not establish any income level.

11. Invites attention to many other similar organizations in existence throughout the country and claims they do the job better than would be otherwise done.

12. The lay members of the Board of Directors sincerely believe that they are performing a needed, helpful and humanitarian function for their employees, and apparently are firmly convinced that nothing that they are doing is in conflict with the established ethical principles of organized medicine.

13. Dr. Brown is a physician, recently retired from the Veterans' Bureau and is being paid a good (under the circumstances) salary as medical director. Licensed in the District of Columbia, May 21, 1937.

14. Whereas the officials of the corporation express a desire to cooperate with the Medical Society of the District of Columbia, it is a fact that in the beginning and at all times there has been no real effort made to apprise the Medical Society of what they were undertaking. They have not considered (officially) the Medical Society during the formative stage of their organization; on the contrary, there seems to have been the desire to keep the matter confidential.



15. Meetings with officials of the American Medical Association on two separate occasions convince us that the national organization is keenly interested in the whole affair and is solicitous as to how we will consider its relation to us locally and what policy the Medical Society of the District of Columbia will adopt in regard to it.

16. What might be done:-

1. Consider it unethical.
2. Control of our own members in terms of the ethical requirements of our own constitution and by-laws.
3. Offer a substitute plan of our own.
4. Cope with the situation in the courts in terms of the local Healing Arts Practice Act.

17. Your committee met with the Board of Directors of Group Health Association, Inc. The attitude of organized medicine in regard to the medical ethics in matters of this kind was fully presented to them. Quotations were read to them from the official code of ethics of the American Medical Association. Other relevant facts were presented. The only reply was made by a Mr. Loomis, member of the Board of Directors, to the effect that he hoped that the Medical Society would see fit to withhold final judgment until Group Health Association, Inc., had been in actual operation a sufficient length of time to practically demonstrate its purpose, its relation to the community and to the medical profession of the District of Columbia.

. . . . .

The secretary explained just what had been suggested by Drs. William C. Woodward and R. G. Leland at the time of their visit. It would seem that Dr. Woodward would advise quo warranto proceedings, which proceedings would require a district attorney or United States attorney for the District of Columbia, who at least was not hostile, that the suit be filed in his name. He saw many difficulties in following this up. Dr. Leland had given a sketchy verbal outline of a plan whereby a pool of money could be created and this could be built up by either the people in the lower income brackets, or even in the higher brackets, and from this pool the care of the sick could be financed. The secretary stated that the very next morning after the meeting he

wrote to Dr. Leland, asking for full details of the plan. Up to date he had received no reply. The secretary opined that the American Medical Association authorities certainly did not have any definite knowledge as to how to proceed in combatting the immediate problem that was confronting the Medical Society of the District of Columbia.

A motion was made concerning the registered letter that was to be sent out with Dr. McGovern's committee's list of approved organizations, groups and individuals, engaged in the practice of medicine, to include the phrase 'to each of the hospitals,' in addition to all members. Seconded and adopted."

Mr. Leahy: Where was that?

Mr. Lewin: That was near the bottom of page 7.

Mr. Leahy: Would you read from page 6, what Dr. Macatee said in that third paragraph?

Mr. Lewin: Yes.

Mr. Leahy: On page 6.

Mr. Lewin: Yes, I'll be right there.

Mr. Leahy: You don't need to read the principles of ethics.

Mr. Kelleher: Yes, I would read the principles.

Mr. Lewin: Yes, I will.

"Dr. Macatee, in continuing, read an excerpt from the latest issue of the Principles of Medical Ethics of the American Medical Association, having to do with the definition of free choice of physicians, as follows:

"The phrase 'free choice of physicians,' as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third party has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not per se cause a contract to be unethical. A 'valid interest' is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. Intervention is the voluntary assumption of partial or full financial responsibility for medical care. Intervention shall not prescribe endeavor by component or constituent medical society to maintain high quality of serv-

fee rendered by members serving under approved sickness service agreement between such society and governmental board or bureaus and approved by the respective societies.

The ambiguity of the situation was immediately apparent.

Dr. Macatee said that he certainly did not read this at the time of the meeting with the H. O. L. C. unit. He did, however, read on that occasion extensively from the Principles of Medical Ethics under which the medical profession is bound, showing that the project as at present constituted could not be expected to be approved by the Medical Society of the District of Columbia, the local unit of the American Medical Association.

Dr. Macatee was rather inclined to think that there should be no hasty action taken at this time and that he would recommend that the four possible solutions as prepared by the subcommittee be not read before the Medical Society. He too thought that it might be possible to bring some accord with the Group Health Association."

Gov. Ex. 37 read from to jury as follows:

"Minutes of the Special Meeting of the Medical Society of the District of Columbia, July 29, 1937. (Excerpt)

Dr. Thomas E. Neill, president, presiding.

Present: Drs. J. Lawn Thompson, William J. Mallory, C. N. Chipman, F. X. McGovern, James A. Flynn, Prentiss Willson, A. F. Tibbets, John H. Lyons, William P. Herbst, Victor B. Reuch, Victor R. Alfaro, S. B. Muncaster, Harry S. Lewis, Oscar Wilkinson, Herman E. Kittredge, Isadore Lattman, Henry B. Gwynn, Joseph Horgan, J. Russell Verbycke, Jr., and other members of the number of about 150.

Upon motion, duly seconded, the reading of the minutes of the preceding meetings was dispensed with.

The Executive Committee makes the following recommendations:

That the chairman of the Executive Committee appoint three of its members to act as a subcommittee, they to add two members of their selection from the Society at large, for the purpose of further studying the Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the Society's attitude should be to the above Group Health Association, Inc.,

and to report to the Executive Committee at the next regular meeting.

Dr. J. Lawn Thompson made a motion that the report of the Executive Committee be adopted. Seconded.

Dr. Thompson, in discussion of the recommendation of the Executive Committee was of the opinion that if the report was to be made to the Executive Committee at the next regular meeting, it would probably be too late to do anything, for by that time the Home Owner's Loan Corporation will be in full action. He felt that a special meeting should be held in the near future; not only from the medical standpoint, but from the standpoint of the Chamber of Commerce and Board of Trade this should be considered.

. . . . .

Dr. McGovern was called upon to discuss the question. He stated that he was the chairman of the subcommittee of the Executive Committee that investigated this matter thus far. He brought out the fact that the purpose of this meeting tonight was to inform the membership of the situation and to familiarize them with the facts obtained to date with an idea of turning it over in the minds of the membership and arriving at some conclusion as to how the Society should act in the matter. He felt that it was apparent from the report that the Group Health Association was not willing to come clean. It was specifically stated that Mr. Penniman, its president, refused to comply in writing to an official communication addressed to him from the Society. In that letter four specific requests were made: that they submit copy of any contract they may have between the Group Health Association and the Home Owner's Loan Corporation with the Federal Home Loan Bank Board; copy of their constitution and by-laws; and any contract that may be in existence in relation to the members of this corporation; and any other matter that would be of importance to the Medical Society. Dr. McGovern pointed out that the communication was sent by registered mail. Mr. Penniman called him by telephone asking that he have luncheon with him where these matters would be discussed. After consulting with officials of the Society Dr. McGovern accepted the invitation to meet Mr. Penniman at luncheon at the Raleigh Hotel. Dr. McGovern made it emphatic that he was not authorized to commit the

Society in any way. Mr. Penniman was willing to give some of the information desired, but when asked for the contract between the Group Health Association and the Federal Home Loan Bank Board, he refused, stating that the Medical Society had no more right to ask for that than they would to go down to Garfinkel's department store and ask to see a contract that the store had with an express company, for instance. Dr. McGovern felt that it was definite that they had some sort of contract and they are not desirous that anybody should see it. In this connection he would add that the American Medical Association, through Dr. W. C. Woodward, tried diligently, spending a whole day in the building of the Home Owner's Loan Corporation, going from office to office, trying to get a glance at the contract without success. Dr. McGovern felt that the contract itself did not interest the Medical Society as much as it did interest the A. M. A. If there is a connection between the Federal Home Loan Bank Board and the Group Health Association, and the Board is spending money, they are spending taxpayers' money which makes it a national entity. As far as the panel of doctors is concerned, Mr. Penniman said he did not think it was appropriate for the Medical Society to have a list of the panels of physicians who have already been employed. He added that it is a well-known fact that members of the Society have been approached. It also is a well known fact that doctors have been asked to come in from the outside and that Dr. Brown has talked to them.

Dr. McGovern said that property had already been leased for the housing of the clinic on I Street, between Thirteenth and Fourteenth Streets. There was no doubt in his mind that the lay members of the Board of Directors of the Group Health Association are thoroughly convinced that they are doing a splendid thing for their employees. He was further convinced that they are not doing anything that might be considered unethical by them.

Dr. Prentiss Willson would inquire what information the committee had with respect to hospitalization of the patients who require hospitalization under the Group Health Association.

Dr. McGovern stated that in the articles of incorporation they are going to give complete medical care and hos-



pitalization. It would not be found out as to how they plan to do that. He pointed out that it is incorporated to include all Federal employees, except Army and Navy. He thought possibly they would have the free use of the local hospitals."

Dr. H. C. Macatee was recognized. He reiterated the plan of the chairman of the Executive Committee that if any members had ideas on this subject, or information about it they should submit it to the committee for investigation. He said he would like to express his personal feeling about this matter, for whatever value it may have. He was of the opinion that the medical society should not take its attitude based on the idea that there are certain scurrilous people who are trying to do a scurrilous thing to the Medical Society and doing it in an underhanded, scheming way. It was his impression, gained from conduct with certain individuals, that they are highly intelligent people who have profoundly studied this subject, who are aware of all the social currents flowing through the country with respect to the relation of the medical profession and the people. They are aware of what has been done elsewhere and the result. 'My feeling is that this is a group of responsible, honest, rather public-spirited people, who are undertaking to do something for the benefit of their associates in office. They are convinced and have secured what they call competent advice that they are on secure legal ground. They have by reason of their knowledge of similar projects elsewhere become convinced that wherever such organizations spring up they almost consistently receive the antagonism and the animosity of the local medical profession.' Dr. Macatee added that he was of the opinion that their desire to avoid publicity in this matter was due to their knowledge of that fact. So far as Dr. Henry Rolf Brown was concerned, Dr. Macatee stated that he has had a distinguished service in the Veterans Bureau where he was highly esteemed. He was retired on account of age and feels that he is not old enough to be put on the shelf. Dr. Brown has been detached from the organized profession for a long time. He, Dr. Macatee, said that he for one did not blame Dr. Brown for taking the position.

Dr. Macatee, continuing, stated that they had evidently obtained advice from the Twentieth Century Foundation and are perfectly aware that similar organizations, such

as the Endicott Johnson Medical Service, which was fought tooth and nail by the county and New York State Medical Society; also the Ross-Loos Clinic of Los Angeles, which was likewise fought tooth and nail by the California organized medicine to the point that the members of that outfit were expelled from membership and then by court order were reinstated, were in operation. It was because of all these facts that the Executive Committee recommended that this matter be recommitted for further study as to what will be wise for the membership as well as the public.

Dr. Macatee added that there is now available a list of corporations and organizations and persons employing physicians in a contractual relationship, prepared under the provisions of the constitution and by-laws. He urged the members to take the list and examine it carefully, and familiarize themselves with its contents.

Dr. Hooe said he believed he was in a position to answer Dr. Willson's question concerning hospitalization. He was of the opinion that it was the intention of this corporation for the present to have their beneficiaries hospitalized in the local hospitals and treated by their hired physicians.

At this point Dr. Sprigg reread the recommendation of the Executive Committee, as amended:

That the Chairman of the Executive Committee appoint three of its members to act as a subcommittee, that they were to add two members of their selection from the Society at large, for the purpose of further studying the Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the Society's attitude would be to the above Group Health Association, Inc., and to report to the Executive Committee, subject to the call of the Chairman.

Duly seconded and adopted.

The secretary stated that it was the duty of the Society's office to fulfill instructions from the Executive Committee to supply each member of the Society with a copy of the approved list that had been prepared, pursuant to Chapter IX, Article IV, Section 5, of the constitution. He pointed out that they were being mailed by registered mail. He announced that any member wishing to secure his list to-

night could do so by applying at the Society's office and signing for same, which would aid in the distribution."

The Court then ruled upon the admissability of certain documents upon which decision had been reserved (ante page 232). The objections to the following exhibits were overruled and exceptions were allowed: Gov. Exs. 73A and 151.

Gov. Exs. 73A and 151 were received in evidence.

The following exhibits were read to the jury, as follows:

Gov. Ex. 186 is a letter from John F. Hayes of Washington, D. C., to Dr. William C. Woodward, dated July 31, 1937:

"DEAR DOCTOR WOODWARD:

I attended the special meeting of the District Medical Society on the night of July 29th. This special meeting was called for the purpose of hearing the report of the special subcommittee appointed to secure facts and information regarding the Group Health Association, Inc.

I am assuming that Dr. F. X. McGovern, Chairman, has sent to you a full and detailed report to you.

I do not know that you expect any word from me relating to the meeting. It may be stated, however, that there were present about 150 members of the Society. Dr. Sprigg read a formal and somewhat lifeless report reviewing the facts and information which had been obtained regarding the Group Health Association, Inc. Nearly all of his facts were substantially the facts which you and Dr. Leland had supplied to the group which attended the meeting here about two weeks ago.

In so far as I could observe, there was no new information in the Sub-Committee's report, except that it did set out the fact that the Committee had by registered letter invited or requested the President of the Group Health Association, Inc., to furnish the Sub-Committee certain information including:

- (1) A copy of its rules and by-laws;
- (2) A list of the physician personnel of the organization;
- (3) A copy of its contract with the Home Owners Loan Corporation.

President Penniman replied by telephone, inviting the Committee to lunch with him at the Raleigh Hotel. Nothing

worthy of a review happened at the luncheon, except that Penniman agreed to supply a copy of the rules and by-laws when printed and a list of physicians when the staff had been filled. He refused to supply a copy of the contract on the ground that it was really the property of the Home Owners Loan Corporation, or some such reason.

There was then about twenty minutes of general discussion by members of the Medical Society, in which Doctors Sprigg, McGovern and Macatee took active part. Doctor McGovern mounted the rostrum and made a very clear, able and comprehensive review of this entire subject and presented his subject in a manner which impressed his hearers and showed the seriousness of the entire movement.

His remarks had the effect of creating alarm and was just what was needed, because the reading of the Sub-Committee's formal report was lifeless and stilted and made no impression—in my opinion.

The Medical Society then approved the formal report and—as I understood—instructed the Sub-Committee to investigate further as to methods and means of meeting the situation and report at a future time.

Nothing whatever was said on the subject of legal proceedings either in the report or in the discussion. Mr. F. A. Fanning, attorney for the Association, was not present. Your name was not mentioned nor was the name of Dr. Leland mentioned.

The above are my impressions of the meeting. If I have made any error in the state of facts, please understand that you should be guided by the report of Dr. McGovern who of course is in position to supply more accurate and complete information than I.

Very truly yours, John F. Hayes."

Gov. Ex. 187 is a carbon copy of a letter from Dr. Woodward to Dr. Conklin dated August 12, 1937:

"DEAR DR. CONKLIN:

Sometime ago I wrote to Dr. McGovern, asking him to inform me concerning the results of the special meeting called by the Medical Society of the District of Columbia to consider the activities of the Group Health Association. In the course of a recent visit to Washington, Dr. McGovern told me that he was no longer on the Committee having charge of the matter and that he had referred my letter

to you. Will you not let me know what was done by the Society and what the present situation is?

Yours truly, ———, Director."

Gov. Ex. 188 is the reply of Dr. Conklin to Dr. Woodward dated August 14, 1937.

"DEAR DR. WOODWARD:

In reference to your inquiry of August 12, concerning the present status of the Medical Society's deliberations, I would state a Committee at present constituted as follows:

Dr. A. C. Macatee, Chairman

Dr. R. Arthur Hooe

Dr. Thomas A. Groover

Dr. C. B. Conklin

has been organized for the purpose of giving further study of the Group Health Association with view to making recommendation to the Executive Committee as to the Society's attitude in the premises. At the special meeting of the Medical Society to which you make reference and which was attended by some ninety members with Mr. Hayes present, a detailed report was made of the various contacts with the Home Owners' Loan Corporation Group. Various opinions were expressed by individual members ranging from the taking of most drastic measures in the way of boycott, etc., to various conciliatory propositions. Finally, an Executive Committee recommendation was accepted to the effect that the Chairman of the Committee appoint a subcommittee of three members which in turn would select two members from the Society at large. The function of the Committee would be to seek further data and bring a recommendation to the Executive Committee as to plans for a course of action. The aforesaid Committee has had one meeting. An expressed policy is to receive reports from any individual members and to obtain proposed plans from members as to course of procedure.

It will give me pleasure from time to time to report any developments. In the meantime, the Committee would be very much pleased indeed if the American Medical Association Headquarters would wish to be represented at any of its meetings or would have any proposals to combat the movement which has implications affecting far greater territory than the District of Columbia.

Very truly yours, C. B. Conklin, M. D., Secretary."



Gov. Ex. 181 is a carbon copy of a letter from Dr. Woodward to Mr. John F. Hayes, Washington, D. C., dated August 21, 1937:

"DEAR MR. HAYES:

Will you not sometime within the coming week learn what you can concerning the activities of the Group Health Association, with particular reference to the establishment of its clinic and the publication of the names of the members of its medical staff. You may recall that the association proposed, according to the newspapers, to open September 1.

Confidentially, I am preparing an article on the situation and would like to have the latest details.

Say nothing to Conklin or anyone else about my plans for publication.

Yours truly, — — —, Director."

Gov. Ex. 182 is the reply of John F. Hayes to Dr. Woodward dated August 24, 1937:

"DEAR DR. WOODWARD:

I regret that efforts made yesterday and today to secure information regarding Group Health Association, Inc., through the District Medical Society, have not been very successful.

Dr. Conklin is out of the city. A New Committee or Sub-committee was appointed consisting of Dr. Henry C. Macatee, Dr. R. Arthur Hooe, Dr. Thos. A. Groover, and Dr. F. X. McGovern. Nearly all of these doctors are out of the city. I was able to speak to Dr. McGovern on the telephone, but he had no up-to-date information other than the fact that the Medical Society will hold another meeting on this particular subject on September 10th.

On some independent investigation of my own, I learned that the clinic of this Association is to be located at the Evans Electrical Building. I called there, and observed that this is a small but attractive two store building owned and occupied by the O. R. Evans and Bro. Inc., dealers in electric fixtures and lamps, etc. This firm occupies the first floor and it has on hand and present in all directions a large supply of floor lamps, and fine merchandise of that character.

I inquired for the offices of the Group Health Association and was informed that they have leased the second floor of this building. Thereupon I went to the second floor; there is no elevator. The second floor was entirely unoccupied. This entire floor is one enormous room, approximately 25 feet wide and possibly 70 or 80 feet long. At the present time it has no partitions, few if any electric lights; the walls and ceiling and floors require reconditioning. In my judgment it will require at least four or five weeks to put this second floor space in anything like working condition.

This O. R. Evans and Bro. building is located at 1326 Eye St., N. W. If the affairs of the Group Health Association are to be conducted from these headquarters it is my opinion that they are starting in most modest and unassuming style.

Thereupon, I returned to my office and called on the telephone the office of Mr. Wm. F. Penniman, of the Home Owners' Loan Corporation. Incidentally, I observe, from the Congressional Directory, that he is Assistant General Manager for District No. 6, comprising the State of Arizona, California, Idaho, some other states and Hawaii and Alaska.

I asked the young lady if she could supply me with any printed information regarding the Group Health Association. She referred me to the Home Owners' Loan Corporation Publicity Man, Mr. Acton. Thereupon I went to Mr. Acton's office and was informed by him that no news matter had as yet been prepared by him; that such matter as had appeared in the local papers was premature and without official sanction.

He stated that their clinic on Eye Street had not yet been started and that it would be several weeks before there would be any news to give out. He suggested that I call upon Mr. Penniman for further information. In view of the experience of the Committee of the District Medical Society at the luncheon given by Mr. Penniman to that group I considered it the part of wisdom to confer with Mr. Penniman at some remote time in the future.

Dr. Conklin may return to Washington Saturday, and if so I will see him then and report further to you.

Very truly yours, John F. Hayes."

Gov..Ex. 37 was read from to the jury as follows:

"Minutes of the Special Meeting of the Executive Committee of the District Medical Society of September 8, 1937. (Excerpt)

"Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. E. G. Breeding, Charles B. Campbell, D. N. Chipman, William T. Gill, Jr., A. C. Gray, R. Arthur Hooe, Henry C. Macatee, F. X. McGovern, Thomas E. Neill, John A. Reed, E. Hiram Reede, Sterling Ruffin, Henry R. Schreiber, Earl R. Templeton, R. Lomax Wells, C. B. Conklin; Thomas A. Groover, by invitation.

The Chairman announced that the special meeting was called to hear a report of a subcommittee of the Executive Committee, which had been appointed pursuant to action of the Society taken on the evening of July 29, 1937.

The Secretary was called upon to make a report in the absence of the Chairman of the Subcommittee, Dr. H. C. Macatee. It was stated that during Dr. Macatee's absence from the city during the month of August, Dr. R. Arthur Hooe and committee members thought that owing to a clamor for action that had been set up by certain Society members, it was incumbent upon the committee to hold a meeting. At a meeting, which was held in the office of Dr. Thomas A. Groover, it was adopted that Dr. Thomas A. Groover and Dr. F. X. McGovern be duly appointed from the Society at large as members of the Subcommittee. It was conceived that the function of the committee was to consider the Group Health Association cooperative medical service movement, with view, if possible to stating the Society's attitude and also, if possible, to offer plans for combat. The second meeting was held in Dr. Groover's office and a final meeting on this evening in the Society's office. The following is given as a statement of opinion of the committee at this time:

1. That the Group Health Association is unethical and that the participation in it by any member of the Medical Society of the District of Columbia would render him or her subject to disciplinary action by the Society.

2. Your committee at this time has no definite recommendation to make with respect to combatting the activities of

the Group Health Association other than is embodied by implication in the preceding paragraph.

3. It is the opinion of your committee that the Medical Society of the District of Columbia should maintain close contact through the chairman of this committee with the American Medical Association in an effort to formulate a suitable and an effective policy with respect to combatting the activity of the Group Health Association.

It was explained that Dr. Macatee had been duly notified of the committee's activities during his absence and also that it was the desire of the committee to hold a meeting just previous to the meeting of the Executive Committee on this evening. Dr. Macatee had stated over the telephone that his afternoon was very well taken up and it would be impossible for him to be present.

Upon motion, duly seconded, the Executive Committee unanimously accepted the report of the Sub-committee.

At this point Dr. R. Arthur Hooe called on Dr. F. X. McGovern to state his views.

Dr. McGovern said that he looked upon this Group Health Association movement as an organization coming in and interfering with his business. He added that he expected to be in practice for some 20 years and he did not propose, if it could be avoided at all, to have an organization such as was proposed to interfere with his work and income. 'Just what are you fellows going to do about it?' He cited the instance of the musicians who had succeeded in preventing the Marine Band from cutting in on their business in playing before assemblies without cost to the sponsors. Through the organized musicians activities not only was this Governmental agency, the Marine Band, stopped from so proceeding but an adequate salary had been obtained for each of the Marine Band musicians. The lawyers as a group had prevented inroads in their business. 'It just doesn't seem that we are active in preventing the National Government from entering the practice of medicine and interfering with our business. It should be demanded from the American Medical Association that they send a man down here now and see just what could be done.'

Dr. T. A. Groover stated that he heard of no plan that was practical in opposing this group practice. 'If we would hire a lawyer, I doubt seriously whether it would do any

good, as apparently there is nothing illegal in what is being contemplated. There is one other suggestion, that the Medical Society set up a health insurance program to combat. He thought that this would be a tremendous undertaking and should not be done without American Medical Association assistance. It should be recognized that what happened in England, along about 1910-1912, was that there were active certain prepaid insurance plans, the finances and management of which had gotten so chaotic that these various groups literally begged the Government to take them over and run them. The members of the Society should know that most every large country has now some form of health insurance. The English profession support their plan. Health insurance seems to work better in the Scandinavian countries. These countries are small and thrifty and have not been in a war for 100 years or more but have profited tremendously from the wars that have been carried on about them.

Dr. Sterling Ruffin stated that it was apparent that all were opposed to the activities of the group organization. He thought that the report, as submitted, should go back to the committee for revision; that the American Medical Association should be contacted, gaining assurance that they approved what would be the result of the subcommittee's deliberations. Dr. Ruffin made a motion to this effect."

Gov. Ex. 190 is a carbon copy of a letter from Dr. Woodward to the defendant Dr. Conklin, Secretary of the District Medical Society, dated September 8, 1937:

"Dear Doctor Conklin:

Our Executive Committee and Board of Trustees meet in Chicago next week, September 15, 16, and 17. They are much interested in developments with respect to Group Health Association, particularly with respect to any activities and plans of the Medical Society of the District of Columbia in relation to it. If you drop me a line giving the latest information available, in time for me to have your letter mimeographed for the use of the Executive Committee and the Board, I shall appreciate it.

Yours truly, \_\_\_\_\_, Director."



Gov. Ex. 84 is a letter from Dr. Conklin to Dr. Woodward, dated September 13, 1937:

"Dear Doctor Woodward:

In reference to your letter of inquiry under date of September 8, 1937, I would state that there have been no further developments of importance relative to the Group Health Association.

There is a subcommittee of the Executive Committee, about which you may have information, constituted as follows:

Henry C. Macatee, Chairman, R. Arthur Hooe, Thomas A. Groover, Francis X. McGovern, Coursen B. Conklin. This committee reported at a special meeting of the Executive Committee that it had no substitute plan to offer at this time; and further, that in view of apparent violation of the Code of Ethics of the American Medical Association in that free choice of physician would not be allowed, and that contract practice was involved, no approval could be given to the movement. The general statement of the subcommittee, as imparted to the Executive Committee, was as follows:

"It is the opinion of your committee:

1. That the Group Health Association is unethical and that the participation in it by any member of the Medical Society of the District of Columbia would render him or her subject to disciplinary action by the Society.

2. Your committee at this time has no definite recommendation to make with respect to combating the activities of the Group Health Association other than is embodied by implication in the preceding paragraph.

3. It is the opinion of your committee that the Medical Society of the District of Columbia should maintain close contact through the chairman of this committee with the American Medical Association in an effort to formulate a suitable and an effective policy with respect to combating the activity of the Group Health Association.

The Subcommittee was instructed by the Executive Committee to prepare, for distribution to the members and the press, a detailed statement of attitude. This is now in formulation.

Our recent information is that there has been no progress in the conversion of a second-floor building on Eye Street, between Thirteenth and Fourteenth Street, into clinic headquarters. The large barren room itself appears devoid of any accessories such as proper lighting, plumbing, etc., for the successful carrying on of their project.

Very truly yours, C. B. Conklin, M.D., Secretary."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Regular Meeting of the Executive Committee of the Medical Society of the District of Columbia, of September 27, 1937. (Excerpt)

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. A. B. Bennet, Daniel L. Borden, Charles B. Campbell, C. N. Chipman, Augustus C. Gray, Raymond T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, F. X. McGovern, Thomas E. Neill, John A. Reed, E. Hiram Reede, Sterling Ruffin, Earl R. Templeton, R. Lomax Wells, and Cour-  
sen B. Conklin.

\* \* \* The Chairman, at this point, called on Dr. H. C. Macatee, Chairman of a Subcommittee to consider the Group Health Association, Inc., for a report. The report was read, Dr. Macatee stating that there had been two meetings of the committee and that the committee recommended the following for presentation to the membership:

At a special meeting of the Medical Society of the District of Columbia, held July 29, 1937, the membership was advised of all the facts that the executive Committee had been able to gather respecting the purposes, proposed methods, and progress of a corporation, composed of employees of the Home Owners' Loan Corporation, now in process of organization, the object of which is to provide complete medical, surgical and hospital care for its members and their dependents, upon a prepayment plan of the financial support through membership dues. The professional services offered by the corporation are to be supplied by a full-time, salaried staff of medical and other technical employees. The name of the organization is Group Health Association, Incorporated, of the Home Owners' Loan Corporation.

• The Executive Committee recommended at the special meeting that the Society authorize a further study of the

subject by the Committee in order to enable it to report suitable recommendations to the Society looking to the formal adoption of an official attitude toward this proposed new type of medical practice, unfamiliar to this community. Such an expression of the Society's attitude is necessary for the guidance of our membership, both with respect to possible employment by the corporation and with respect to professional relationships to its medical and technical employees when and if it shall have begun to function.

The Executive Committee finds: First, that employment by or professional relations with the Group Health Association, Incorporated, on the part of our members would be conditional upon approval of the organization by the Society as required by Chapter IX, Article III, Section 2, of the Constitution; that no application has been made by any member or by the organization itself for such approval; and that consequently there has been no submission of the data required for approval to the Compensation, Contract and Industrial Medicine Committee of the Society.

The Committee finds: Second, that the conditions of rendering the medical and surgical service offered by Group Health Association, Incorporated, as set forth in such written promulgations of the organization the Committee has been able to see and as indicated verbally by officers of the corporation, appear to be inconsistent with the criteria for an acceptable form of contract practice as set forth in Chapter III, Article VI, Section 3, of the Principles of Medical Ethics of the American Medical Association, by which we are obliged to be guided. In particular it would appear that at least two of the criteria would necessarily be violated, viz.: '1. Where there is solicitation of patients, directly or indirectly'; and '5. When free choice of a physician is prevented.' In the first instance, it is obvious that the solicitation of employees of the H. O. L. C. to take membership in Group Health Association, Incorporated, is an effort to entice many away from medical relationships already formed to the medical personnel of the corporation. This effort would raise the question whether a further criterion of an acceptable contract is violated, viz.: '4. When there is interference with reasonable competition in a community.'

However, the criteria above quoted must be applied in the light of experience, and we are required by the same Principles of Ethics to exercise prudence in forming opinions: 'Judgment should not be obscured by immediate.

temporary or local results.' In any form or instance of contract practice 'The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.'

The Executive Committee, therefore, recommends the adoption of the following:

Resolved, That a final expression of the attitude of the Medical Society toward the acceptability of any cooperative medical service organization as an approved agency for the employment of members is manifestly impossible without the submission of all related data as a basis of approval, and manifestly undesirable when information is lacking as to whether any such group will ever become operative; and

Resolved, That the membership be reminded of the requirements of Chapter IX, Article III, Section 2 of the Constitution for their guidance with respect to Group Health Association, Incorporated, of the H.O.L.C.; and

Resolved, That the Medical Society recognizes a growing desire in Washington for some feasible plan of cooperative group medical service on a prepayment basis; that it recognizes the value of such an arrangement for many people of limited incomes; and that, having already provided a means in the Health Security Administration, for the people without ready money to secure medical service on a postpayment plan, it is willing to collaborate with appropriate, responsible groups to devise methods for group prepaid medical service mutually acceptable to the two essential parties to such an agreement, viz.: the group needing and proposing to pay for the service and the group capable of furnishing it; and

Resolved, That, if hereafter it shall appear necessary or desirable, the Board of Medical Supervisors of the District of Columbia be requested to determine, by judicial decision if necessary, whether the operation of Group Health Association, Incorporated, or any similar organization, is or will be in conformity with the Healing Arts Practice Act for the District of Columbia.

Dr. Macatee, upon concluding reading, stated that the Journal of the American Medical Association would publish in its issue of October 2, 1937, a detailed analysis of the Group Health Association, Inc., pointing out weak points from a legal viewpoint. It began with the statement that

Title 5, Chapter 5 of the District Code was taken advantage of, which had to do with the mutual welfare of individuals in organizations. It was clear that the Government was definitely embarking in the insurance business and that the check-off from the Government payroll would have all of the evil points that were included in checkoff in the factories for union dues. The American Medical Association's statement would cover four or five pages in the Journal. It was emphasized that this material was not for release until September 29. Dr. Macatee stated that it was his view that despite this article appearing in the A. M. A. Journal, that there should be no hesitancy in adopting the report of the Subcommittee.

Dr. Sterling Ruffin and others agreed with this view.

Dr. F. X. McGovern was recognized. He stated that he thought the report was very good but rather weak. He thought conditional verbs should be eliminated and indicative mode used. For instance, it was stated certain things appeared to be. He thought a direct statement should be made here that there was definite violation of ethics and of the principles of good medical practice. It was his opinion that the Secretary should get sufficient reprints to supply the entire membership and that the prepared statement as presented by Dr. Macatee withheld.

The Secretary stated that he was present at the time of the preparation of the report submitted by Dr. Macatee. He was of the opinion, after hearing for the first time the American Medical Association's statement that certainly the third resolution, having to do with the idea that some prepayment plan taking care of individuals in Washington should be adopted and that there was a definite sentiment abroad for same, should be stricken out as it appeared to him that it would conflict with the American Medical Association's arrangement of the disapproval of the Government's prepayment plan. A demarcation should be drawn between the Government entering the practice of medicine with an insurance scheme and private firms in other states which were not apparently meeting with success in propagating health insurance.

Although this view was supported by a few members present it was unanimously adopted that Dr. Macatee's report, as presented, be accepted with recommendation of adoption by the Society.



Dr. Macatee made a motion that he thought might take care of some of the objections to the report, that the following resolution be added:

Resolved, That the attention of the membership be directed to a critical analysis of Group Health Association, Incorporated, prepared by the Bureau of Legal Medicine and legislation of the American Medical Association to appear in the Journal of the American Medical Association for October 2, 1937; and that the membership be admonished to read the entire article for their information and guidance.

This resolution was unanimously adopted."

Mr. Leahy. Just read what Dr. Hooe stated.

"Dr. R. Arthur Hooe was especially strong in advocating the adoption of Dr. Macatee's presentation. He thought that the Medical Society might be accused of selfish motive if it eliminated any of it."

A copy of a letter from Dr. Yater to Dr. Macatee, dated August 23, 1937, attached to the minutes was read to the jury as follows:

"Georgetown University Hospital

August 23, 1937.

Dr. Henry C. Macatee  
26 Columbia Avenue  
Rehoboth Beach, Delaware

DEAR DR. MACATEE:

I suppose you have heard that the Hospital Superintendents' Association has requested the Central Admitting Bureau to sever relations with the Medical-Dental Service Bureau and to act as a collecting agency itself on the accounts of patients aided by the Community Chest. This, of course, would be the death knell of the Medical-Dental Service Bureau.

Personally, I can see no great advantage to be gained for the hospitals by making this change. The amount of saving possibly would be relatively little since the Central Admitting Bureau would have to increase its staff, its

space and equipment. So far as I can learn, no one has demonstrated that there would be any substantial saving.

Furthermore, it was decided in the very beginning that the function of the Central Admitting Bureau was that of a clearing house and a disbursing agency and that it would have nothing to do with collections. Also it can be shown in black and white that the Medical-Dental Service Bureau has done an excellent job of collecting bills for hospitals considering the class of patients involved.

If the business of the hospitals is withdrawn from the Medical-Dental Service Bureau, this change will cut the income of the Medical-Dental Service Bureau to approximately \$600 a month which will be insufficient to do a good job with. Since it seems to have been forgotten, I would like to point out that the Medical-Dental Service Bureau has always paid more than its share toward the rent, phone service and upkeep of the Medical Security Building. This fact should certainly be pointed out to the hospital superintendents.

Since it appears, therefore, that the proposed change would ruin the Medical-Dental Service Bureau, which was established by the organized medical and dental professions of the District of Columbia for the purpose of aiding the underprivileged sick, and since the change could not possibly bring about substantial saving to the hospitals, I believe a very strong appeal should be made to the hospital superintendents, preferably individually, to reconsider this request in the light of the above facts. The hospitals must take a more liberal attitude toward the Washington plan. We cannot afford to have it destroyed. The hospitals must be made diplomatically to see that they exist only for the purpose of making it possible for physicians to better care for sick people and that these physicians have developed and are administering the Washington plan. The hospitals cannot afford, in my opinion, to disregard the wishes of the medical profession, especially since the formation of the new Doctors' Hospital indicates dissatisfaction with the hospitals as they are now run.

Although I am no longer officially connected with the Central Admitting Bureau nor the Medical-Dental Service Bureau, I feel so strongly about this matter that I am willing to do most anything to prevent destruction of a structure which we have all strived so hard to build up. I hope you will see it the same way that I do and will go to bat

against the proposed change. Please let me know of what assistance I may be in the matter.

With warm personal regards, I am,

Very sincerely yours, Wallace M. Yater, M. D."

Gov. Ex. 189 was read to the jury as follows:

"American Medical Association,  
Bureau of Legal Medicine and Legislation,  
William C. Woodward, M. D., LL. M., Director.

September 1, 1937.

To the Board of Trustees,  
American Medical Association:

At the meeting of the Executive Committee of the Board of Trustees of the American Medical Association, June 29, 1937, a resolution was adopted authorizing the Editor and the Secretary and General Manager to inform the medical profession of the country as to the efforts of the Home Owners' Loan Corporation to enter upon the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. In response to your request for information concerning the matter, I submit the following report.

Respectfully, Wm. C. Woodward, M. D., LL. M., Director, Bureau of Legal Medicine and Legislation."

"Memorandum for Dr. West and Dr. Fishbein:

To avoid possible conflict on my part with the attached Canons of Professional Ethics of the American Bar Association, I am submitting the accompanying material to you in the form of a report. If you decide to publish it, I hope that my letter will be published along with it so as to make my status clear. If you think the letter should be addressed to you or to either of you, change can be made accordingly.

The minutes of the meeting of the Executive Committee, June 29, 1937, show the adoption of the following resolution:

"Doctor Bloss moved that the Editor and the Secretary and General Manager be authorized to proceed to inform the profession of the country as to the efforts of the

HOLC to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. Doctor Hayden seconded the motion and it was carried.

W. C. W."

Attached is a document entitled "Extract from Canons of Professional Ethics, American Bar Association," and an article entitled "Group Health Association, Incorporated, Unlicensed Health Insurance and Corporate Practice of Medicine under Federal Auspices."

Gov. Ex. 293, a portion of the Journal of the AMA for October 2, 1937, was read from to the jury as follows:

"Organization Section of the Journal of the American Medical Association:

Devoted to the Organizational, Business, Economic and Social Aspects of Medical Practice.

Saturday, October 2, 1937.

Group Health Association, Incorporated; Health Insurance and Corporate Practice of Medicine Under Federal Auspices

Prepared by the Bureau of Legal Medicine and Legislation

Unlicensed and unregulated health insurance and corporate practice of medicine in the District of Columbia, and wherever else in the world a civil officer or employee of the United States government may be found, are proposed in a certificate purporting to be a certificate of incorporation, filed on behalf of Group Health Association, Inc., in the office of the Recorder of Deeds, of the District of Columbia, Feb. 24, 1937. The certificate makes eligible for membership every employee of every branch of the United States government other than officers and enlisted men of the army and navy. It attempts to authorize the association—

To provide, without profit to the corporation, for the service of physicians and other medical attention and any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and the construction and operation of a clinic and medical office building, and the construction and operation of a hospital in the manner permitted by law, for the members hereof and

their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease.

The Federal Home Loan Bank Board, a fiscal agency of the United States government, is sponsoring Group Health Association morally and through a contract of such a character that neither the Federal Home Loan Bank Board nor Group Health Association is willing to make it public.

### Origin of Group Health Association

The development of a health insurance organization among employees of the federal government in the District of Columbia, to pay benefits to its members in the form of medical and hospital service and not in cash, was foreshadowed by an anonymous nineteen page prospectus, marked 'Confidential: For Private Circulation Only,' that came to light in the early part of the current year. It offered 'A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families In Washington.' The prospectus said:

The aim of this plan is to make available to Federal Employees in Washington, and to their families, adequate medical care, both preventive and curative; to provide this care at moderate cost; and to place that cost on a regular, budgetable basis within the means of the group to be served. If Federal employees are typical of the general population with equivalent incomes, many do not now obtain adequate medical care, especially preventive service and care in chronic conditions, while many others incur disastrous debts each year because of sickness costs. The provision of better care should promote health and wellbeing and reduce time lost from work because of illness. The plan should be of benefit not only to the employees and their families, but also to the Government they serve.

The prospectus stated incidentally that 'federal employees lose approximately 7 days a year from work because of illness,' but it did not purport to justify the proposed organization of a health insurance association on



the basis of and study of the nature and extent of illness among federal employees and their dependents, nor on the cost of such illness to such employees or to the government. Later, however, after Group Health Association had been organized, its president, by way of justification or excuse, asserted that the association was the result of studies of health conditions among the employees of the Federal Home Loan Bank Board and its affiliated agencies. No report of any such studies, however, their methods and results, has ever been made public. Admittedly, too, even the secret study referred to did not include a parallel study of sickness among employees of the federal government other than those in the Home Owners' Loan Corporation, one of the affiliated agencies of the Federal Home Loan Bank Board.

### Incorporation of Group Health Association

The Code of the District of Columbia, 1929, title 5, chapter 7, section 179, provides—

Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as 'Health, accident and life insurance companies or association.'

Group Health Association comes clearly within the category described, for the fact that it pays its members indemnity, not in cash, but in the form of medical and hospital service, is not material. The association, however, was probably deterred from undertaking to operate under this section because it provides that—

No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund. . . .

Presumably, the association, at the time of its organization, did not have in hand the required \$25,000.

True, this section of the District Code, regulating the business of insurance in the District of Columbia, provides—

That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service, or solely of employees of any individual, company, firm, or corporation.

But Group Health Association could not take advantage of this, for it is not a 'relief association' but an insurance association, and, moreover, under what purport to be the by-laws of the association, its membership is not to be made up solely of employees of the federal government. Members whose connections with the federal government have terminated are to have the right of continuous membership as long as they pay their dues and assessments. The association is to give no 'relief' within the legal meaning of that term; it is to do nothing more than discharge its legal obligations to its members under its membership agreement.

Only by incorporation, however, could the promoters of Group Health Association avoid personal liability for the debts and torts of the association. Unable to qualify as a corporation carrying on the insurance business, and perhaps unwilling to submit to the supervision and control to which the insurance business is subjected, the organizers of Group Health Association, while still proposing to carry on the insurance business as defined in the District of Columbia Code, sought refuge under a provision of that code that has no relation to insurance. Group Health Association was therefore 'incorporated' under the provisions of the District of Columbia Code, 1929, title 5, chapter 5, authorizing the incorporation of benevolent, charitable, educational, literary, musical, scientific, religious and missionary organizations, including societies formed for mutual improvement or for the promotion of the arts. Nothing in the certificate of incorporation of Group Health Association suggests that it has any educational, literary, musical, scientific, religious or missionary aspirations or is intended for the promotion of the arts. It is difficult to discover any activity named in the certificate of incorporation of Group Health Association that by any possibility brings the organ-

ization within any other of the categories named. The association is not a benevolent or charitable organization; the poorest charwoman or laborer is to pay for the indemnity offered by the association against loss through illness exactly the same dues or premiums that are to be paid by even the most wealthy officials and employees of the Federal Home Loan Bank Board and other government agencies, and nobody is to get anything whatever free under any circumstances. The association cannot successfully claim the right to incorporate as a corporation for 'mutual improvement' within the meaning of the code, for any construction of the provisions of the code that would permit such incorporation would leave the code wide open for all manner of abuse; such provisions then could be used for the organization of morally and financially irresponsible finance, banking, insurance, business and professional corporations of all kinds, each organized for the 'mutual improvement' of its members financially, through the exploitation of some other class or classes in the community, just as Group Health Association is. Such abuses would not be prevented by the fact that banking, insurance and many other forms of business activity and the professions are strictly regulated by law; for the business of insurance and the practice of medicine in which Group Health Association proposes to engage are likewise strictly regulated by law, and if through incorporation as an organization 'for mutual improvement' the association could defeat the laws regulating insurance and the practice of medicine, other persons, differently incorporated, could defeat the laws relating to banking, insurance and other businesses and the laws relating to the professions other than medicine.

Aside from the obstacles in the way of the incorporation of Group Health Association pointed out, there is a further obstacle. An organization cannot be lawfully incorporated to effect unlawful ends, and the certificate of incorporation filed by Group Health Association indicates clearly that one of its purposes is insurance, which cannot be lawfully carried on under the provisions of the code under which the association professes to be incorporated, and its other purpose, the practice of medicine, is unlawful if carried on without a license such as the association does not possess and cannot obtain either in the District of Columbia or in any state in which the association proposes to practice.

That Group Health Association does propose to engage in the insurance business is apparent from an examination of the District code, which provides that every corporation, joint stock company or association not specifically exempted, which collects dues or assessments from its members and which provides for the payment of indemnity on account of sickness or accident, shall be known as a health or accident insurance company or association and shall qualify accordingly. Under its certificate of incorporation, Group Health Association is to collect dues or assessments from its members. In event of their illness or injury, or the illness or injury of any of their dependents, it is to pay indemnity in the form of medical, hospital and other services. The fact that indemnity is paid in the form of services and not in the form of cash does not alter the situation. Without considering any of the legal principles by which this dictum may be supported, it must be clear even to any one that the payment of indemnity in services releases the insured member of the association from what otherwise would be his own obligation to pay in cash for such services and thus releases his own cash for whatever use he desires to make of it. The payment of indemnity in services is therefore the equivalent of cash payment.

That Group Health Association proposes to practice medicine in the District of Columbia, Maryland, Virginia and possibly other states is shown by its certificate of incorporation and by its by-laws. Its certificate of incorporation is a feebly disguised attempt on the part of the organizers to obtain authority for the association, without liability on the part of its members, to treat its members and their dependents, through hired servants and agents of the association, for any and all manner of disease and injury, and its so-called by-laws elaborate on that plan. This certainly constitutes the practice of medicine by the association, notwithstanding the fact that the association is not and cannot be licensed so to practice. The United States District Attorney for the District of Columbia and the Corporation Counsel for the District have both held that a corporation cannot lawfully engage in the District of Columbia in the practice of a profession that requires licensure or registration as a condition precedent to lawful practice, even though the corporation undertakes to practice through licensed or registered agents. If and when Group Health Association begins to practice medicine as proposed in its certificate

of incorporation and its by-laws, the United States District Attorney and the Corporation Counsel for the District, in pursuance of the duties of their respective offices that they have sworn to perform, will be bound to take action to enforce the law.

From what has been said it is to be assumed that the attempt of the organizers of Group Health Association to incorporate is ineffective and that the members of the organization constitute only a voluntary association. If so, the members of the association will have a certain personal liability for its debts and torts, notwithstanding the disclaimer in the certificate of incorporation.

### Financial Relations

The certificate filed by Group Health Association in the office of the Recorder of Deeds in the District of Columbia provides that the Association is to have no capital stock and is to render to its members and their dependents the services described therein, 'without profit to the corporation' and without personal liability on the part of its members. The certificate is silent as to the sources from which the association obtained the money necessary for its organization and establishment. It is silent also with respect to the sources from which it is to derive its operating income, except that it refers to members who have paid their 'dues' and to members who have paid their 'dues and assessments, if any.' In the pamphlet containing what purports to be the by-laws of the association, but which contains nothing to show that the members of the association ever adopted them, provision is made for the payment of 'dues' and reference is made to the payment of 'assessments,' but the formula for levying assessments and the limitations on them, if any, do not appear. These supposed by-laws provide, however, that they may be amended by the board of trustees at any time, and, if this attempt to vest in the board of trustees supreme control over the affairs of the association is effective, the board, at any 'regular meeting or at any special meeting when the proposed amendment has been set out in the notice of said meeting,' can amend the by-laws so as specifically to authorize assessments and can even at that same meeting levy on the members of the association any assessment that it deems proper.



## Federal Home Loan Bank Board

The sources of the money necessary to promote the organization of Group Health Association in the first place, to organize it, to provide it with necessary quarters and equipment and to guarantee operating costs long enough to determine whether the association can or can not become self-supporting are secrets carefully guarded by the Federal Home Loan Bank Board and Group Health Association. Whether this is because there are private interests behind the association that are unwilling to have their connection with it disclosed, or because disclosure might uncover a precedent that would lead to embarrassing demands on the Federal Home Loan Bank by persons desirous of forming similar organizations in the field of medicine, dentistry, insurance or social work, or simply because disclosure would subject the board and the association to annoying criticism, is not known. One prominent officer of the Federal Home Loan Bank Board, of the Home Owners' Loan Corporation, and of the Federal Savings and Loan Insurance Corporation, who is a member of Group Health Association and has given it his particular blessing, is listed also as one of the trustees of the Twentieth Century Fund, Inc., of which Edward A. Filene of Boston is listed as president and trustee; but perhaps this has no significance.

Under what law does the Federal Home Loan Bank Board or any of its affiliated agencies finance by government loans private organizations such as Group Health Association? Even if there were such authority, good judgment would hardly justify the making of such loans in the entire absence of any likelihood of repayment. There would seem to be no likelihood of the repayment by Group Health Association of any loan made to it under its present setup. The dues of members of the association are so low that it is hardly likely that it will ever be able to pay even operating expenses—provided, of course, it undertakes to furnish its members and their dependents with really first class medical and hospital service. As far as any available record shows, provision has not been made by the association for the amortization of the initial costs of plant and equipment.

Possibly the contract between the Federal Home Loan Bank Board and Group Health Association, made apparently without advertisement or competitive bidding and carefully concealed from the public, may provide for pay-

ments to the association by the board so greatly in excess of the cost of the service that the association is to render as to enable the association to repay such advances as have been made by private interests, to pay for necessary quarters and equipment, and to protect the association against loss from medical and hospital services rendered officers and employees of the board and its affiliated agencies, and the dependents of such officers and employees. In any event, it has been admitted that the Home Owners' Loan Corporation has already appropriated an initial sum to enable Group Health Association to render services of some kind, to somebody, somewhere, and according to newspaper reports the Federal Home Loan Bank Board has guaranteed an advance up to \$100,000 to get the association under way.

### Dues and Assessments

Under the by-laws of the association, 'family membership' is available for 'married or single members with dependents,' at a cost of \$39.60 per annum payable in equal monthly instalments. No limit is placed on the number of dependents on whom a 'family member' can confer all benefits of the association under this class of membership. 'Individual membership' available for 'married or single members having no declared dependents' is now priced at \$26.40 a year, payable monthly. The amount of the dues can be changed at any time by the board of trustees. A 'dependent' is defined as a person 'totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service.'

### Check-off on Government Payroll

The form of application for membership provided by Group Health Association offers the member the option of paying his dues personally or of assigning to the association so much of his government salary as may be necessary for that purpose and requesting his 'employer,' the government of the United States, to deduct semimonthly the amount assigned and remit it to Group Health Association, Inc. As this assignment form is also an application for membership and obviously belongs to the files of the association, an additional assignment form has been provided, presumably to be filed with the paymaster of the Federal Home Loan Bank Board or the particular affiliate of the board by which the member of the association is employed.

This form specifically assigns, sets over and directs the Home Owners' Loan Corporation and the Federal Savings and Loan Insurance Corporation to pay Group Health Association the amount due to that association, out of any salary or wages due or to become due to the member so long as membership continues. This establishes the check-off scheme sometimes employed to hinder defections from the ranks of organizations that fear difficulty in maintaining membership and to impose on the employer the burden that properly belongs to the organization of providing a collection agency. Under the check-off system, a member who finds membership no longer advantageous cannot quietly and without explanation cause his membership to be terminated by the simple expedient of omitting payment of dues. He must take affirmative action and resign from the organization, with danger of loss of social standing among his fellows, and he must notify his employer that his membership has been terminated, with the possible loss of esteem by his superior officers if the organization happens to be a pet scheme that they are promoting.

It is well established, however, that the assignment of government salaries is contrary to public policy. The assignment of any claim against the United States that has not yet been earned is forbidden by statute, and even after a claim has matured it can be legally assigned, if it can be assigned at all, only by conforming with the conditions laid down by statute, and the provisions of this statute have been held to apply to government salaries. So positive are the express and implied inhibitions against the assignment of federal salaries that, when it was deemed desirable that employees of the Department of Agriculture and of the Department of Commerce be permitted to assign their salaries, it was deemed necessary first to procure authority by act of Congress, and even then the authority granted for assignments by employees of the Department of Commerce was expressly limited to assignments made while absent from Washington and employed in the field.

The check-off scheme planned by Group Health Association, with the apparent approval of the Federal Home Loan Bank Board and its affiliates, gives the premiums or dues that are payable to the association priority over every other claim, moral or legal, against the salary of every member of the association. The association does not undertake to indemnify its members in cash, which would help the mem-

ber to provide himself and his dependents, in time of sickness and in time of health, with the necessities of life, including medical service, but to indemnify him only in medical and hospital services, and then only to the extent that the board of trustees of the association and its medical staff deem feasible in view of the resources of the association at the moment and of the condition and location of the patient. Dues or premiums under the check-off system must be paid. The insured may use only the remainder of his salary for such supplementary medical service as the association does not provide and for food, clothing, shelter and drugs and other medical and surgical supplies necessary for himself and his dependents. The hired physician of the association is to be assured his wages through the check-off system, even though food, medical and surgical supplies, and sometimes essential service, such as the use of radium and high voltage roentgen therapy, may have to be omitted because of the inability of the employee to provide them. This is in marked contrast with ordinary medical practice, in which the essentials of life and treatment for the patient and his dependents are obtained first, while the physician waits for his fee—and does so gladly when the circumstances of the patient so indicate.

If Group Health Association succeeds in establishing the check-off system as a proper and lawful way of insuring the payment of the present and prospective debts of government employees, it will undoubtedly prove a boon to labor unions, finance corporations, merchants who do business on the installment plan, landlords and others, who under the law cannot attach or garnishee the salary of an employee of the federal government but who will be able to protect themselves in advance by demanding assignments of federal salaries as securities for debts. If Group Health Association is going to have the check-off system adopted by the federal government for its benefit, there is no reason why any and every other person, whether individual or corporate, may not claim the same privilege.

### Membership

The original certificate filed by Group Health Association in the office of the Recorder of Deeds of the District of Columbia makes eligible for membership all employees of any branch of the United States Government Service

other than officers and enlisted men of the United States Army and Navy. It makes no discrimination on account of race or color. Such employees number 840,159 and are scattered throughout the entire civilized world. These employees and their dependents would probably number 2,500,000 and provide a rather extensive field of medical practice for Group Health Association. The organizers of the association, however, in what they call its by-laws, seek to handicap the civil employees of the federal government who are not employees of the Federal Home Loan Bank Board and its affiliated agencies, by providing that "in case persons other than employees of the Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the board of trustees and a majority of the members of the corporation present in person or by proxy at a regular or special meeting."

But this restriction, like all others contained in the by-laws, is of little moment; the board of trustees can remove or modify it in any way it sees fit, at any time.

Membership will be restricted geographically by the by-laws by which members and their dependents, to be entitled to avail themselves of the medical services to be performed by the association, must be located in the District of Columbia or within ten miles of its boundaries or must come to the city of Washington for advice and treatment, although the medical director may provide for house calls at points not exceeding twenty miles distant. The potential membership of the association, however, even as thus geographically restricted, will be considerably more than 115,912. To determine the total load to be carried, the dependents of members must be added to the foregoing numbers, possibly an average of two dependents for each member.

These figures show only the potential membership and load of Group Health Association. What the actual membership and load will be, no one can foretell. If, as has been alleged, there is an undue prevalence of illness among employees of the Federal Home Loan Bank Board or of some of its affiliated agencies, a fair number of the employees who are physically inferior may be expected to join the association.

Employees, too, who now are deterred from claiming sick leave because of the expense of employing a physician to



vouch for the sickness and to furnish the necessary certificate may join the association because it furnishes an easy way to obtain such certificates practically gratis. Illness among the dependents of employees, particularly among those with large families, will tend to swell the membership rolls.

As affecting the size of the membership, the standards that Group Health Association adopts in determining who may and who may not be a member will be a determining factor. If persons suffering from all manner of chronic diseases and infirmities are readily accepted for membership, employees may postpone applying for membership until they or one or more of their dependents are manifestly in ill health. Only experience can determine the probable number of members of Group Health Association and of their dependents.

The physicians employed by Group Health Association are primarily the servants and agents of the association. The records made by them as servants and agents of the association belong to the association. Their primary duty is to the association, not to the patient. They must abide by the terms of their contracts of employment, and those contracts presumably require conformity and compliance with the by-laws and rules of the association. The by-laws and rules of the association expressly provide that—

The Medical Director shall render such reports as the Board of Trustees shall require.

Obviously, under this provision of the by-laws, the board of trustees, which includes two representatives of the Federal Home Loan Bank Board, can call for any disclosure whatever concerning the activities of the medical director and physicians and nurses working under his direction, and use, free from any obligation to secrecy, the information thus obtained.

A member of Group Health Association, as one of the conditions of membership, seems to waive, in favor of the association, his right to professional secrecy on the part of any physician-employee of the association who attends him, and impliedly his dependents, in accepting the services of such physician-employee, likewise waive their right to secrecy.

### Area to be Served

If it is difficult to determine the future membership of Group Health Association, it is not so difficult to determine the extent of the area over which it plans to extend even its initial activities. The certificate of incorporation contemplates apparently world-wide service. The by-laws, however, propose to limit the area covered by providing that 'To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles.'

This area covers the entire District and considerable areas in Maryland and Virginia and is bisected by the Potomac River.

The District of Columbia alone covers somewhat more than sixty square miles. An area including the District of Columbia and the territory within ten miles of its boundaries comprises approximately 750 square miles. The territory including the District of Columbia and the region within twenty miles of its boundaries covers approximately 1,950 square miles. It is obvious that to serve even the normal area, covering the District of Columbia and the territory within ten miles of its boundaries, about 750 square miles, will call for the establishment of clinical centers at various points and for liberal provisions for transportation of physicians and nurses and ambulance service. This is based on the announced plan of the association of operating through salaried full-time physicians and not through local physicians paid on a fee basis. The increased difficulties of the situation if a serious effort is to be made to cover the District of Columbia and an area within twenty miles of its boundaries is apparent.

### Benefits or Indemnity Offered

Group Health Association proposes to provide its members and their dependents with medical and hospital service. This is to be done through a salaried full-time medical staff, supplemented by a few part-time specialists, through contracts with hospitals, and through nurses when circumstances so require. The medical staff is normally to make home and hospital visits over an area of about 750 square

miles and, at the discretion of the medical director, over an area of 1,950 square miles. Patients are to be encouraged, however, to present themselves at a central clinic for treatment. In such an ambitious, untried, project it is not surprising that the board of trustees should have reserved the right to itself and to its medical staff to limit the service rendered whenever either the board or the medical staff sees fit. The association has been careful not to obligate itself to furnish service of any definite kind or quantity. The so-called by-laws of the association expressly provide that—

Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources.

Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change,

To one familiar with the city of Washington and its environs, the question necessarily arises as to how Group Health Association has solved or proposes to solve the question of service to Negroes employed by the government. Certainly government officers and employees and their dependents cannot be denied membership in the Government-financed Group Health Association simply because they are Negroes. The solution will be watched with interest.

Before considering the service or indemnity that Group Health Association promises its members and their dependents—always subject to the will of the board of trustees and its medical staff—it will be well to consider definitely what it will not do or will do only conditionally. The association will not treat members who suffer from industrial accidents, nor will it perform any surgery on the brain or nervous system. It will not treat venereal diseases, except at the personal expense of the patient, at the rate of 50 cents per treatment. The association will not treat a member or any of his dependents if the medical director has recommended confinement to an institution for mental or tuberculous disease or drug or alcohol addiction. It will not provide its members with (1) dental treatment; (2) medicines; (3) surgical appliances, orthopedic devices,

crutches, or artificial limbs; (4) eyeglasses or eyes (sic); (5) hearing devices; (6) radium or high voltage roentgen treatment; (7) oxygen tanks and tents and materials; (8) blood transfusions; (9) special nursing service, unless ordered by the medical director; (10) treatment, services, supplies, and items of any kind prescribed or ordered by a physician not in the service of the association, or (11) any expense of hospitalization in excess of that allowed by the association. The association will, however, endeavor to procure such merchandise and services for members and their dependents at reduced rates. Additional limitations on any and all services and merchandise furnished by the association may be imposed by the board of trustees at any time on fifteen days' notice, and in any individual case the medical director, or his representative is authorized to determine and prescribe the extent of the medical service to be rendered.

Subject to all the limitations and qualifications stated, and such further limitations and qualifications as the board of trustees and the medical director and his representatives may impose, the association offers its members and their dependents in return for the fees paid—

Medical and surgical examination and treatments, including examinations in special departments, such as refractions of eyes, laboratory test, x-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so, in which case the corporation will contribute the sum of \$4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which cases a maximum of \$4.00 per day will be paid for said period, not exceeding 21 days.

As far as can be learned from the certificate filed by Group Health Association and from its by-laws, no member of the association and no dependent of a member is to have any freedom of choice of his physician. Obviously, this must be so, for with a limited, salaried, full-time medical staff, operating over an area of 750 square miles or more, it

would be impossible for each staff member to cover the entire area daily, to satisfy the desires of members scattered over the entire area. It is understood that the association will not object to a member or a dependent of a member being treated at his own expense by a physician not in the service of the association. As the members of the salaried staff of the association are likely to be looked on by the profession generally in the community as on the outer verge of ethical practice, if not altogether beyond the pale, it is not clear how they are to obtain qualified consultants or procure hospital service for their patients.

Announcement has not been made at the present writing of the medical staff, beyond the appointment of Henry R. Brown, M. D., formerly of the Veterans' Administration, as medical director. Announcement has not been made of the hospitals in which the association proposes to provide accommodations for its members and their dependents. Quarters for a clinic or laboratory have been rented in the business district of Washington but are not yet equipped. The date originally proposed for inaugurating active medical and hospital service, September 1, has been set ahead indefinitely.

### Conclusions

There is no reason to believe that Group Health Association, even if it could lawfully engage in the insurance business and the practice of medicine as it proposes to do, could materially reduce the absence rate among officers and employees of the Home Owners' Loan Corporation or its related agencies. Absences on account of illness might even be increased, for a medical certificate would cost nothing. A physician cannot always deny that a man has a disabling headache, or a woman a disabling menstrual period.

Since there is no evidence to show that government employees are unable to pay for medical services, there is no reason to believe that the cheapening of medical service will make him more likely to seek medical aid. There is no reason to believe that the character of medical service under the Group Health Association plan can be kept at the same average level of quality as that prevailing in private practice. Especially would quality be likely to fail in times of epidemics and of any unusual prevalence of disease, when the limited medical staff of the association



would be overworked and could find no relief. In any event, medical service under the association would be likely to be handicapped by difficulty likely to be experienced in obtaining the best consultant service and hospital accommodations. Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status.

The probable results on the medical profession of the successful operation in the District of Columbia and vicinity even of a single organization such as Group Health Association cannot be estimated.

Out of a total population of 486,869 in the District of Columbia, 115,912 are civil employees of the United States government, and, of these, 2,517 are employees of the Federal Home Loan Bank Board and its affiliated agencies. If to these persons, all of whom are eligible for membership in Group Health Association, their dependents are added, allowing an average of two dependents for each employee, a total of 347,736 persons is reached, out of a total population of 486,869 that the promoters of Group Health Association, according to their certificate of incorporation, seek to withdraw from the ordinary practice of medicine and to cover into a group health insurance contract practice system and treat through physicians hired for that purpose. The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest.

Under the scheme proposed by Group Health Association, far greater benefits will accrue to the richer and more liberally paid employees of the Federal Home Loan Bank Board and its affiliates and of such other government agencies as may identify themselves with the scheme than to employees of more meager resources. The scheme is so planned that the richer and more liberally paid employees are to obtain medical service at rates based on the incomes of the poorest employees. The courts have repeatedly held that the value of medical services rendered to a patient may be properly appraised in relation to his wealth, just as the value of legal services are commonly appraised in relation to the value of the interests that the lawyer is called on to protect, whether interests involving the life of his client or his client's property. Under the present scheme,

fees that are charged for medical services to the richer and more liberally paid employees are to be identical with those charged employees of the lowest grade, doing part-time work. The richer and more highly paid and influential employees are therefore to gain the most financially, by this scheme. Nothing in the certificate of incorporation or by-laws assures to those lower in the ranks that they will receive the same quantity and class of medical service as that provided for their superiors."

Gov. Ex. 108 is a letter from defendant Conklin, Secretary of the Medical Society of the District of Columbia to the defendant Fishbein, Editor of the Journal of the AMA, dated October 7, 1937:

"DEAR DOCTOR FISHBEIN:

The Medical Society of the District of Columbia desires 1,000 reprints of the article which appears in the October 2, 1937, issue of the Journal, Organization Section, p. 39B-46B, entitled 'Group Health Association, Incorporated,' for distribution to its members. We should appreciate your informing us of the cost and of the earliest probable time for delivery.

Thanking you, I am,

Very truly yours, C. B. Conklin, M. D., Secretary."

On the exhibit is the pencil notation, as follows:

"We have less than 50. Bureau Medical Economics can give 50."

Gov. Ex. 109 is a carbon copy of a letter from Olin West, Secretary and General Manager of the AMA, to C. B. Conklin, dated October 19, 1937:

"DEAR DOCTOR CONKLIN:

We shall send you at once printed copies of the article that appeared in the Journal of October 2, entitled 'Group Health Association, Incorporated.'

I am not definitely sure that we can send as many as 1,000 copies but if they are available the full number will go forward as soon as possible and any deficiencies will be made up later.

Very sincerely yours, Olin West."

Gov. Ex. 37 was read from to the jury, as follows:

Minutes of Business Meeting of the Medical Society of the District of Columbia, of October 6, 1937. (Excerpt)

Dr. William M. Sprigg, Chairman of the Executive Committee, was recognized. He made a motion to the effect that in view of the nature of the business to be considered that the Society go into executive session. Duly seconded and adopted.

The Chair requested any non-members present to retire from the room, and appointed Dr. F. C. Fishback as sergeant-at-arms.

Dr. Sprigg, continuing, stated that for the information of the membership he would report that the Executive Committee met 4 times during the summer for the purpose of studying questions of the organization which has been featured by the Home Owners' Loan Corporation. He pointed — that officials of the American Medical Association lent their aid — Dr. W. C. Woodward, Director of the Bureau of Legal Medicine and Legislation and Dr. R. G. Leland, Director of the Bureau of Medical Economics, discussed the matter before the subcommittee; and Dr. Olin West, Secretary, discussed the matter with certain members of the Society. All discussing this question were thoroughly opposed to the plan as presented in toto. Subcommittees were appointed to study the question and the following resolutions are the result of these deliberations, concerning Group Health Association, Inc.

**RESOLVED**, That a final expression of the attitude of the Medical Society toward the acceptability of any cooperative medical service organization as an approved agency for the employment of members is manifestly impossible without the submission of all related data as a basis of approval, and manifestly undesirable when information is lacking as to whether any such group will ever become operative; and

**RESOLVED**, That the membership be reminded of the requirements of Chapter IX, Article III, Section 2 of the Constitution for their guidance with respect to Group Health Association, Inc., of the Home Owners' Loan Corporation; and

**RESOLVED**, That the Medical Society recognizes a growing desire in Washington for some feasible plan of cooperative group medical service on a prepayment basis; that it recog-

nizes the value of such an arrangement for many people of limited incomes; and that, having already provided a means in the Health Security Administration, for the people without ready money to secure medical service on a post-payment plan, it is willing to collaborate with appropriate, responsible groups to devise methods for group prepaid medical service mutually acceptable to the two essential parties to such an agreement, viz.: The group needing and proposing to pay for the service and the group capable of furnishing it; and

RESOLVED, That, if hereafter it shall appear necessary or desirable, the Board of Medical Supervisors of the District of Columbia be requested to determine, by judicial decision if necessary, whether the operation of Group Health Association, Inc., or any similar organization, is or will be in conformity with the Healing Arts Practice Act for the District of Columbia; and

RESOLVED, That the attention of the membership be directed to a critical analysis of Group Health Association, Inc., prepared by the Bureau of Legal Medicine and Legislation of the American Medical Association, to appear in the Journal of the American Medical Association for October 2, 1937; and that the membership be admonished to read the entire article for their information and guidance.

Upon motion, duly seconded and adopted, the recommendations of the Executive Committee were considered seriatim.

Dr. Thomas A. Groover was recognized. He stated that if there was no objection he would like to introduce a substitute for the foregoing resolutions. No objections were made. He presented the following:

Whereas, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and published a comprehensive report on the activities of Group Health Association, Incorporated; and

Whereas, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it

Resolved, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combatting the activities of said Group Health

Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

Dr. Groover moved the adoption of these substitute resolutions. Seconded by Dr. F. X. McGovern.

In discussion of the subject, Dr. Groover stated he wished to briefly state some of his reasons for proposing these substitute resolutions. He said:

'I wish briefly to state some of my reasons for proposing these substitute resolutions.

I have grave doubts if this Medical Society alone can do a great deal toward combatting Group Health Association, Incorporated, and believe that the most effective assistance and support it can invoke is that of the American Medical Association.

The A. M. A. has manifested a keen interest in this problem and in the October 2nd issue of the Journal has caused to be published a comprehensive survey of it which I trust many of you have read carefully.

If you have, you must have noted that there are three dominant notes that run through it—the first being that Group Health Association is illegal; the second, that Group Health Association is unethical; and third, that the operation of Group Health Association would be inimical to the best interests of the medical profession and the public.

As to the illegality of Group Health Association, I am not personally qualified to speak, but I happen to know that the A. M. A. has made a careful study of this aspect of the question and it is their opinion that it is illegal. It would seem out of place at this time for this Society to commit itself to any plan of procedure such as that recommended by the Executive Committee in the event that legal action against Group Health Association is undertaken later. Obviously any plan of procedure should be contingent upon the advice of counsel.

As to the ethical responsibilities of the Medical Society of the District of Columbia and its members the conclusion to be drawn from the A. M. A. report is inescapable. It says: "physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status." In contrast to this clear-cut statement the statements in the Executive Committee report are equivocal and quibbling for which



I can find no justifiable excuse. The members of this Society I believe have a right to expect a definite unequivocal expression from the Society as to their ethical responsibilities which is lacking in the Executive Committee report.

Finally it is the collective opinion of organized medicine that prepayment plans for medical care except under very special conditions are inimical to the best interests of the medical profession and the public. The quasi endorsement of any prepayment plan for a community like Washington as contained in the Executive Committee report might well alienate the support of the A. M. A. and prove disastrous to its influence and leadership. For these and other reasons which I will not go into I believe that any such commitment by this Society might very well prove to be exceedingly embarrassing.

Dr. Sprigg was recognized. He stated that he personally was very glad Dr. Groover brought in this report. He added that Dr. Groover was on the subcommittee to study this subject. He pointed out that the report from the American Medical Association did not come to the attention of the committee until the last meeting of the Executive Committee. 'Dr. Groover has studied this report very carefully and has brought in such a resolution as that committee ought to have brought in in the beginning. I thank him for it and heartily endorse him.'

Dr. Groover's motion to the effect that the substitute resolutions be adopted (motion was duly seconded by Dr. McGovern) was finally adopted.

Dr. Sprigg made a further motion to the effect that a copy of Dr. Groover's report be enclosed, as a report from the Executive Committee, with the copy of the statement prepared and published by the American Medical Association, which is to be sent to every member of the Society. Seconded and adopted."

Mr. Leahy I would like to have read page 4, because that precedes the adoption of the resolution.

Mr. Kelleher: All right.

Mr. Leahy: That includes Horvath's prepared statement.

Mr. Lewin: We want that page too.

Mr. Leahy: All right.

Mr. Kelleher: This portion that I now read precedes the adoption of the resolution to which I referred.

“Dr. A. B. Bennett said that he personally did not believe that any resolutions from this Society would have any effect on Group Health Association, Inc. Furthermore, he did not believe the report of the American Medical Association would have any effect on Group Health Association. It was a corporate body under the law no matter how evasive it may have been. As he saw it there was only one hand that could close the door of that group—the court. Personally he would like to see the Society proceed to get that one hand and go to the court. ‘If we can go before a court and get the best lawyer and prove it is illegal, that the charter was obtained under the wrong part of the laws, and the court sees it our way, it will be declared illegal and closed up. If the court does not see our way then, and without provision of insurance, we would proceed on the same line and beat them out at their own game.’ In continuing, Dr. Bennett stated that there was in attendance an Active Member of this Society, an American citizen, born in this country, sent to Europe, locating in Austria, Hungary where he practiced medicine from 1915 to 1931. He made a motion that Dr. Horvath be given the privilege of the floor to read what he prepared concerning this subject. Seconded and adopted.”

Mr. Lewin: Do you want this in as Horvath's?

Mr. Leahy: Yes.

Mr. Lewin: All right. Go to it.

Dr. Frank S. Horvath read a prepared statement (copy appended). He suggested that the Society set up a group health type medical service in cooperation with the American Medical Association. He outlined briefly a plan which would serve those with an income of \$3,000 or less; not including those in the Army, Navy, or Public Health Service. Membership dues would be paid, possibly \$30 to \$45 per annum. He made a motion that this problem and proposition be sent to the Executive Committee for study and some plan be formulated and accepted by a special committee and brought to the floor as soon as possible; further, that this program, if worked out, be communicated to the American Medical Association for early consideration with a sugges-

tion that it be adopted and introduced all over the country under the direction of the home office. No second to this motion."

Now, do you want Hooe's statement?

Mr. Leahy: No, read the Horvath statement.

Mr. Lewin: It is attached to the minutes. You will have to take it out of the original—I have it (examining papers). I have it in my book. I will take over.

**"Statement Prepared by Dr. Frank S. Horvath, Presented Before the Society on the Evening of October 6, 1937"**

As a member of this Society I take liberty to express my reaction to this problem. I think my reaction, my opinion, and my suggestions may have some value to you as I have some personal experience in this matter and I shall be very sincere in telling you about it.

I happened to practice medicine abroad in Austria, Hungary, from 1915 to 1931, just in that historical period when the old mode of practicing medicine, based upon the high ethical principles of Hippocrates, slowly but gradually and radically changed to socialized medicine or as they call it to—compulsory state health and sick benefit insurance.

I wish to discuss not only the changes brought on by private organizations and institutions and later on a big scale by the state itself, but I'd like to talk about the reactions and policies and failures of organized medicine over there.

My purpose with this description is not only to tell you a story, to show you a piece of medical history which many of you know, but to give you a historical background with its lessons to awake your conscience and responsibility in the last hour, when we still may not before long decide upon our professional future and the future of the fundamentals of practicing medicine. Until it is not too late keeping in mind what mistakes and failures followed the policies of our colleagues abroad when they by poor organization, hesitation and selfishness dropped and lost the initiative in moulding and building their professional future by failing to make the inevitable change in the mode of practicing medicine. This failure, as you all know, resulted in the regimentation of medicine with the almost complete annihilation of the high ethical principles we all cherish.

This change, however, did not come so suddenly as it may look in the first moment. It started in the 80's when the growing industrialization of Hungary produced the organizations of workers and white collar men as well. One of their chief aims was to *secure* for the health and sick benefit of their members. They organized their health insurance institutions themselves. A certain per cent of their wages was paid into the treasury of the organization. They organized hospitals, clinics, hired physicians, etc. The money was, however, not used exclusively for the good of the insured but for rewarding good party members mainly, as the physicians and clerks belonged almost all of them to the socialist labor party. Remember this well! These institutions were organized by laymen partizans and the institutions born out of politics never could serve the purpose well. The underpaid doctors, in the dispensaries and hospitals, gave a second rate service, overloaded with bureaucratic matters. The insured got a second rate service only, though it was a definite progress for the masses in comparison with what they had before.

The growing industrialization of the country raised the class struggle so high that many private concerns like banks, factories, life insurance companies, etc., felt they had to do something to ameliorate the antagonism between labor and capital. Instead of raising the wages they decided to show their good will by organizing infirmaries, hospitals, and medical care to their employees of course by or with the money derived from deductions of the employees' wages.

How did organized medicine react to these practices? The number of physicians at that time was relatively small and the practice of medicine quite prosperous. It is no wonder that they did not pay any special attention to these movements. They simply scorned and looked upon their colleagues, engaged in the insurance groups, as second-rate doctors as they did not care to get the masses in the lower brackets. But when the different private concerns started out with health insurance they realized that this will infringe upon their practices considerably they commenced to discuss the problem in the medical societies here and there, emphasizing the importance of the preservation of free medical practice. However, they were not professional minded enough.

Many of the leaders, very clever in the intricacies of compromising and through their good connections always found

an expedient to get and accept a good job in the insurance institutions so far 3-4 at one time.

In the meantime time marched on and many other groups widened the scope of the health insurance activities. In 20 to 30 years the Union of teachers, the Army, the Police corps, the Municipal Employees of Budapest, and many others organized their own clinics, hospitals and medical staffs and remember well none of them was organized and run by medical men but mainly by lawyers or politicians, with the result that there were more clerks and bureaucrats than necessary, political proteges mainly. The money was spent mainly on these proteges and the doctors got poor pay, were overloaded with bureaucratic matters and in the selection of physicians not the right of the best but pull prevailed.

The Medical Association could not do anything as many of the leaders were personally involved, who did not want to curtail rights, acquired 10 to 15 years before, and though they saw the downfall of the old ethical way of practicing medicine they did not do anything about it, they could not turn the tide, they lost their chance as other very serious things happened.

The government, composed of loud politicians of the post-war and post-revolutionary period, to break the unrest after the war and to satisfy the masses, who wanted it, inaugurated compulsory health and sick benefit insurance without asking the medical men and in spite of the protest of organized medicine, though this protest still was weak and not sincere. On the other hand there were a great many young physicians and who were willing to accept jobs for any pay just to escape starvation.

So the state medicine came; instigated, inaugurated and run by politicians against the weak and not sincere protest of disorganized medical profession, which did not have a good far-seeing policy to prevent this and break the tide in fiery social struggles handicapped with a large number of half starving young physicians in the bag who desired to find a place under the sun.

Just a few facts:

(a) About 13 per cent of the inflowing huge money was paid to the medical men.

(b) Twenty-six (26) per cent for medicine and hospitalization.



(c) The rest was all devoured by the administration.

(d) Malingering with sick benefit caused many a headache to the government and dragged the institution into bankruptcy.

(e) The patients were served poorly as the doctors were underpaid, and overloaded with patients and with bureaucratic matters so much that they hardly could write down the name and diagnosis of the patient and there was scarcely any time left for examination or treatment. And in spite of the fact that the masses in general got more medical care than before the compulsory state medicine era, nobody was satisfied; the patients expected more for their money, they felt that they got mass service only and no individual care; on the other hand the regimented doctors lost their initiative and self-reliance, were underpaid, felt humiliated and were regarded second-rate clerks only in the Big Mill where the bureaucrats and politicians were the masters and bosses. And nevertheless for positions with a monthly salary of \$25 to \$30 there were once 1,400 applicants for 40 openings.

To give you a fairly complete picture may I say this:

(a) About 80 per cent of the population belongs to the socialized medicine services.

(b) Ten (10) per cent of the remaining 20 per cent is broke and so there is about 10 per cent of the entire population only left for private practice.

Members of the organized medicine who opposed state medicine had to give in and were very anxious to get some position in the state medicine organization which was instigated, organized and run without them, against them and against the principles they had followed and cherished for centuries because they failed to recognize the danger in time and failed to organize, because they lost the initiative to change the old way of practicing medicine, to produce and offer themselves new schemes to the public and thus to keep the helm for themselves while it was not too late.

Now let us leave this gloomy but true picture and have another retrospection (historical) in the history of medicine in general. From the dawn of medicine its practice always rested upon the high ethics laid down by Hippocrates.

The basic principles were:

(a) The patient's confidence in his physician.

(b) The patient's right to select his physician.

(c) The intimate relation between the two which enabled the physician to do the most good for the sick must be preserved for the sake of mankind and no third somebody or something must infringe upon it to interfere with initiative and self-reliance of the physician. This principle is the salient point of our fight and it must be preserved no matter by what means or what political maneuvers.

Accepting this as our chief aim let us study the aforementioned relation of patient and physician. We must first of all emphatically state that there are three important factors in this relation:

1. The patient.
2. The doctor.
3. The Economic Factor of Fee Paid for the Medical Services.

The economic status or financial capacity of the patient is a changeable one and if the change is great and involves many patients it may and will change the old scheme of practicing medicine and if we do not look out it may change and ruin that fundamental relation also. I think it is very logical that if necessary we must and shall change the old way—classical mode of practicing medicine, if we want and must save the basic principles!

We must recognize that the pauperization and the intelligence level of our people is higher than ever before, their social demands more conscious and louder and strongly influenced by shrewd politicians. The advance and specialization of medicine calls for more tests and more refined treatments and many of the patients can not fully pay for the services rendered and many of them who could pay would prefer to pay less; such is human nature!

Politicians seem to know and handle their subjects better and are very keen and alert to take advantage on their weaknesses. Certainly they possess more means to influence the public than organized medicine has to save the old ethical way of practicing medicine.

And if the majority of the patients as voting citizens of the states will decide that they want socialized medicine what can we do about it? I am sure that we all agree that we must prevent this, we must assume different tactics and we must make a change ourselves.

To justify this stand we have to recall and study what changes had been attempted up until now, by different sources and what were our reactions to them.

What we have done is very similar to that what happened over there. Meetings, committees, investigations, comprehensive and comparative studies one after the other all ended up with a protest against any change involving the present mode of practicing medicine thinking that the change of form will ruin the salient principles.

We shall be very much mistaken if we believe that the mere protest and emphasis on the ethical principles will save them and will block or prevent a change. We may protest and lose the initiative and helm in making a new form of practice of medicine and finally the major part of organized medicine will have to give in and join and serve a scheme which will or may be made without us or against us.

What organized medicine is concerned the American Medical Association; it took the stand of observation and so far has not proposed or offered a change, expecting a sound change to be evolved by some state or local societies. The Medical Society of the District of Columbia inaugurated maybe one of the noblest and sincerest experiments to tackle this growing problem. I refer to the Central Admitting Bureau and the Medical-Dental Service Bureau for the medical care of people with restricted means. The intentions in planning these institutions were very noble indeed and highly ethical, but seemingly they have no appeal to the masses maybe by lack of publicity or lack in advertising it widely enough. By this scheme we shall have just exceptional cases and not the masses who undoubtedly are seeking and are offered to get medical care in some form of insurance for themselves and their families. If we do not take and get the masses and their continuously inflowing money; laymen or the state are going to do it without us, and probably against us and pay us only crumbs from the lost bread (loaf).

We do not like and object if physicians outside of our ranks make or try new forms, we despise if laymen do it and we think with abhorrence on socialized medicine installed by the state or politicians as we know that it will be not for the good of the sick as it will kill the ethical fundamentals of practicing medicine.

Mr. President, we know all about that new scheme which is in the making under the name of Group Health insur-

ance of the Home Owners' Loan Corporation, which is, maybe, the last warning to us to be wise and to be our masters ourselves.

Why shall we wait that someone else without our ranks shall make it for us or more probably against our will, against our taste and against our interest? Why not make it ourselves? Are we not as good social planners and businessmen as laymen or politicians?

We must realize that no matter what extreme social system may replace the present one, the free practice of medicine of today always will remain to — certain extent as it exists in countries where extreme socialization is general as there will be always people who will get money to pay the doctor whom they have confidence in.

On the other hand we know that our chief aim and I may say duty must be to save the cherished principles of our profession and nobody else is going to do it for us. It is a very important issue of professional policy that we must change our tactics and we shall make a change in the way of practicing medicine to accommodate it to the present and continuously growing trend of social changes. Every one of us must know that we make these changes to save the fundamental ethical principles and not to give them up. Every one should know that this will be a political maneuver or a temporary show, if you want to put it up this way.

Mr. President, the responsibility in this very important matter which every member should feel wholeheartedly makes me to raise my voice in the last hour to suggest and propose that we ourselves shall organize, set up and run a group health insurance type medical service through the Medical Society and in strict collaboration with the American Medical Association. I cannot submit an elaborate plan and I will not argue about details in this hour but I should like to put down the principles and some facts for consideration:

1. The Group Health Insurance of Organized Medicine would provide for medical services to its members. Everybody may be eligible for membership, except the enlisted men of the United States Army and Navy, and employees with an annual income of \$3,000.00 or above. No discrimination be made on account of race or color.

2. Membership dues be \$35.00 to \$45.00 yearly. Special family membership dues be regulated according to the number of dependents.

3. Medical services may be combined with Group Hospitalization, maybe in conjunction with some insurance companies who offer 21 days of hospitalization for 75 cents a month as you all know of.

4. No sick benefits of any kind to be contemplated at any time.

5. The medical staff will consist of the members of the Medical Society of the District of Columbia. Any member may join the staff voluntarily by paying \$50.00 to \$100.00 of initiation fee to get the scheme started (under way). Of course, this service will not interfere with the private practices.

6. Services be rendered in the clinic to ambulant patient, to hospitalized patients and in the form of home calls. The Clinic should have a full-time staff and the home calls and hospital care be given by the rest of the staff keeping up the free choice of doctor so far as possible.

7. The fees paid for these services may be only a fraction of the present fees now but will be and should be raised as the funds grow.

8. Seventy-five (75) per cent of the Board of Trustees be duly elected members from the Medical Society to be our master ourselves.

9. The Central Admitting Bureau be sustained for its present purpose and free medical service be rendered to indigents in the free clinics in the various hospitals.

10. It is understood that at least 15 per cent of the population will be exempted from this scheme and will be subjects of free private practice with the usual fees, which number of patients will be increased by those who always will get the means and determination to select their own physician to get ideal individual care.

This is a roughly outlined conception which I submit for your consideration.

In summary, may I say this: -



(a) All socialized type of medical services heretofore inaugurated by private groups or states (abroad) were all instigated, organized and set up by laymen without us and usually against us. In these schemes laymen or the state were the rulers and the medical men hired and ruled. All of them competed with organized medicine certainly not with equal and right means. In all of them the fundamental ethical principles of the practice of medicine were omitted or essentially curtailed against the good of the sick. The end was socialized medicine for organized medicine by hesitation and by other factors lost the initiative to offer some scheme itself to prevent this.

(b) Socialized medicine is just before our doorstep and set up that way that it may spread all over the country like fire.

(c) So far as I know nowhere and never did organized medicine work out or offer a group health insurance scheme to the public which he set up and governed by the medical man.

(d) My plan and thoughts which are many of yours, if it could be worked out and materialized quick enough would enable us to create and control this organization ourselves and not be left at the mercy of politicians or racketeers. We shall gain the sympathy and confidence of the masses and if we succeed financially we shall make not only a decent living but to save the ethical fundamentals of our profession. I am sure we may prevent or at least lessen the dangers of socialized medicine under political bureaucracy. We shall have in this organization a more advanced and higher type of medical service than they abroad as it will be ethical and sincerely socially minded indeed.

Mr. President, I move that this problem and proposition be sent to the Executive Committee for urgent study and be formulated, if accepted, by a special legal committee elected by the Society and brought to the floor as soon as possible.

Furthermore, I move that this plan, if worked out, be communicated to the American Medical Association for urgent consideration with the suggestion that it be adopted and introduced all over the country under itsegis and direction as home office."

Gov. Ex. 111 is a letter from C. B. Conklin, Secretary of the Medical Society of the District of Columbia, to Dr.

Olin West, Secretary of the American Medical Association, Chicago, Illinois, dated October 9, 1937:

"DEAR DR. WEST:

I thank you for your letter of October 6, 1937.

Personally I wish to express my pleasure and appreciation of learning your reaction to anything that may be proposed that would affect the doctors' best interests. I am happy to state that the Society, in session on the evening of October 6, adopted the following:

WHEREAS, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and published a comprehensive report on the activities of Group Health Association, Inc.; and

WHEREAS, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it

RESOLVED, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combatting the activities of said Group Health Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

This appears to eliminate what might have—an undesirable statement of policy.

Sincerely yours, C. B. Conklin."

Gov. Ex. 110 is a carbon copy of a letter from the defendant West in Chicago, to C. B. Conklin, dated October 14, 1937:

"DEAR DOCTOR CONKLIN:

I am greatly obliged to you for your letter of October 9 in which you present the resolution adopted by the Medical Society of the District of Columbia at its meeting on October 6. I am, of course, greatly pleased at the decision of the society.

I am looking forward with pleasure to seeing you here at the Annual Conference of Secretaries of Constituent State Medical Societies on November 19 and 20.

Sincerely yours, Olin West."

Gov. Ex. 37 was read from to the jury, as follows:

“Minutes of Executive Committee of the District Medical Society, held October 11, 1937 (Excerpt):

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. Daniel L. Borden, C. N. Chipman, A. C. Gray, Raymond T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, F. X. McGovern, Thomas E. Neill, John F. Preston, John A. Reed, E. Hiram Reede, Sterling Ruffin, Earl R. Templeton, and C. B. Conklin.

At the conclusion of the reading of the minutes of the preceding meeting, held September 27, 1937, Dr. Sterling Ruffin was recognized. He said he did not think that the Secretary had reported exactly what Dr. R. Arthur Hooe had in mind and would suggest that the minutes be changed to cover the situation. Dr. Ruffin added that Dr. Hooe proposed about the same thing some time previously before the Executive Committee as he did on the occasion for which the minutes were recorded.

The Secretary stated that he would change the minutes according to Dr. Hooe's intent.

. . . . .

The next motion that Dr. Hooe had to make was that the Executive Committee recommend that the Secretary of the Society address a letter to every civilian hospital Board of Directors in the District of Columbia, informing them of the particular sections of the Constitution that had to do with approval of contracts and warn the hospitals that if they failed to cooperate in every way that they might not be on the approved list.

Much discussion ensued, Dr. W. M. Sprigg reading a prepared letter that he had already arranged to send to the hospital directors relative to this matter.

Finally it was adopted to approve the letter as prepared by Dr. Sprigg with numerous amendments.

Dr. Macatee thought that Chapter VII, Article 4, Section 4 of the Constitution should be drawn to the attention of the members in addition to Chapter IX, Article IV, Section 5.

(Dr. Sprigg was asked by the Secretary for a copy of the letter. He said that he would take it home and revise the letter and later send it to the Society's office.)

Dr. Hooe was again recognized. He stated that there were some 117 women physicians practicing in Washington

and about 12 were members of the Medical Society of the District of Columbia; also there were large numbers of doctors in the city that were in practice and were not members of the Society. This statement was made particularly in rebuttal to a proposed recommendation that the hospitals approve for their courtesy staffs and the regular staffs only members of the Medical Society of the District of Columbia. Without the fold of the Society were a number of 'good doctors.'

Dr. John A. Reed at this point was recognized.

He stated in his opinion the American Medical Association should follow through and duly notify the District Attorney, Corporation Counsel, and other legal officials of the apparent violation of law that Group Health Association, Inc., would violate when and if they start to operate.

Much discussion ensued.

The recommendation was finally adopted that the American Medical Association authorities be communicated with and they be asked to send to the Insurance Commissioner, the Commission on Licensure, the District of Columbia Commissioners, the United States Attorney for the District of Columbia, and the Corporation Counsel, substances of the article that appeared in the October 2, 1937, issue of the Journal of the American Medical Association (organization section, p. 39B), and that if the American Medical Association refused or would not comply, then the Secretary send a reprint of said article to each of these officials.

C. B. Conklin, Secretary."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Special Meeting of the Medical Society of the District of Columbia Held Friday, October 15, 1937 (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. A. C. Christie, Harry F. Anderson, Claude Moore, Howard P. Parker, E. Kirby Smith, R. J. Jansen, Thomas A. Groover, E. A. Merritt, Edgar M. McPeak, F. X. McGovern, Wm. P. Herbst, Jr., Prentiss Willson, William H. Hough, W. Warren Sager, F. C. Fishback, C. N.

Chipman, Charles B. Campbell, Joseph S. Wall, and other members to the number of about 155.

Dr. W. M. Sprigg asked consent to read a letter addressed to the Board of Directors of the various hospitals in the city. Consent was granted.

Dr. Sprigg read the following:

October 15, 1937.

Board of Directors of ——— Hospital,  
Washington, D. C.

GENTLEMEN:

The Medical Society of the District of Columbia desires to call your attention to Chapter IX, Article IV, Section 5 of the Constitution, as follows:

No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

Also, Chapter IX, Article IV, Section 1, as follows:

"Members shall not accept appointment to or continue to serve upon the medical staff of any hospital or dispensary



which is not approved by the Society. A list of approved hospitals and dispensaries shall be available in the Society's office."

Whereas, The Medical Society is using its earnest efforts to give to the people of the District of Columbia, the most advanced and best possible medical care, we, therefore, ask your cooperation by aiding us to carry out this principle.

In view of the above Sections of the Constitution of the Medical Society of the District of Columbia, we hope that your board will see the advisability of making such regulations in your Hospital, so that they may be in accord with and support our efforts.

Respectfully yours,

Dr. Thomas A. Groover was recognized. He felt that this letter was important enough that each member of the Society should have an opportunity to study it rather carefully. He suggested that action be deferred until members of the Society had received copy through the Society's office. He made this in the form of a motion to the effect that copy be mailed to each member of the Society and be brought up at the next business meeting. Seconded and motion finally adopted.

Dr. W. J. Stanton would inquire if this attorney for the Society had passed on the advisability of sending this letter. Dr. Charles P. Cake would inquire what the purpose of this letter was; what is supposed to be accomplished by the letter?

Dr. Sprigg replied that the letter was self-evident, if one stops and thinks when he reads it. He pointed out the Society has been trying to improve itself—to clear its own skirts. He called attention to the policy which had been established for years when hospitals allowed only those members to practice on their staff who were approved by the Board of Directors. He called attention to the differences with Columbia Hospital because the Board of Directors did not approve some member of its staff. It wasn't realized that the Board of Directors had the right to say who shall practice in their hospital. The members of the Society have a perfect right to say who shall be members of the

Society. This letter was merely asking the hospitals to cooperate; nobody was being hit at. He called attention to the fact that one hospital in the city passed a resolution in its board stating that only members of the American Medical Association could practice in that hospital. Dr. Sprigg said the Society does not require that at all; merely that a man who practices in the District of Columbia must be approved by the Society. He pointed out that there are some in the district who are not members of this Society who are just as ethical as he or anyone else. They are on the approved list but are not members of the Society. This letter does not keep those members out of the hospitals. He reiterated that all to be accomplished was to ask the cooperation of the hospitals to help keep the skirts of the Society clean.

One member would inquire if it was meant that members of the Society would not be permitted to practice in a hospital that did not subscribe to an approved list; in other words if they attempt to practice in a hospital not approved by the Society the members of the Society would be duty bound to keep clear of that hospital?

Dr. Sprigg answered that that was correct. He added, 'You have turned a man out of this Society; why?, for good reasons. Now are you going to cooperate and consult with him?' "

Mr. Kelleher: Now I omit a portion.

Mr. Leaby: Won't you get to the point of what the other members said about it?

Mr. Kelleher (Reading):

Dr. Thomas A. Groover was recognized. He felt that this letter was important enough that each member of the Society should have an opportunity to study it rather carefully. He suggested that action be deferred until members of the Society had received copy through the Society's office. He made this in the form of a motion to the effect that copy be mailed to each member of the Society and be brought up at the next business meeting.

Dr. Reed arose to a point of order, stating that Dr. Sprigg's discussion was irrelevant to Dr. Groover's motion.

Another member said that if he received a copy of the letter tomorrow he would not know what the letter was meant to convey.

Dr. Wm. M. Ballinger pointed out that this letter was merely calling the attention of the hospitals to certain resolutions and constitutional provisions of the Society, asking their cooperation. To his mind it was simply a routine letter asking for cooperation. He could not understand why a copy should be sent to every member of the Society.

Dr. Martin M. McLean would inquire who is going to help the hospitals interpret the letter; they may have the same questions arise in their minds.

Dr. Daniel Davis favored Dr. Groover's motion, stating that he would be interested in seeing the letter before voting on it."

Mr. Lewin: And the motion was finally adopted. Now I read from the last paragraph:

"Dr. W. M. Sprigg at this point read a recommendation from the Executive Committee to the effect that the American Medical Association authorities be communicated with and they be asked to send to the Insurance Commissioners, the Commission on Licensure, the District of Columbia Commissioners, the United States District Attorney for the District of Columbia and the Corporation Counsel, substances of the article which appeared in the October 2, 1937, issue of the Journal of the American Medical Association (Organization Section, page 39B), and that if the American Medical Association refused or would not comply, then the Secretary send a reprint of said article to each of these officials.

Dr. H. H. Schoenfeld called a point of order, stating that no notice of this business appeared on the announcement for this meeting.

The Chair sustained the objection."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Regular Meeting of the Executive Committee of the Medical Society of the District of Columbia, held October 25, 1937. (Excerpt)

Dr. E. Hiram Reede, Vice Chairman, presiding in the absence of Dr. W. M. Sprigg.

Present: Drs. E. G. Breeding, A. C. Gray, R. Arthur Hooe, F. X. McGovern, Thomas E. Neill, John F. Preston, John A. Reed, E. Hiram Reede, Henry R. Schreiber W. M. Sprigg, E. R. Templeton and C. B. Conklin.

The minutes of the previous meeting, held October 11, were read and approved.

At this point Dr. Thomas E. Neill addressed the committee, stating that he had received an invitation from the Home Owners' Loan Corporation Group Health Association in the form of a letter, with enclosed ticket, to a banquet to be held at the Mayflower Hotel on the evening of October 30. He spoke of his contacts with Mr. John Childress, who was very active in this group clinic affair. Dr. Neill added that he had been Mr. Childress' family surgeon and had charged no fees since 1930. Mr. Childress offered him the position as surgeon in the present setup, which he had refused. Dr. Neill was interested in getting some instructions from the committee as to how he should answer the letter.

It was finally thought advisable to have Dr. Neill's secretary answer the letter, using the third person, stating his inability to be present.

It appeared that the banquet would be addressed by Dr. Richard Cabot, Professor of Clinical Medicine at Harvard University. Dr. Neill stated that he knew Dr. Cabot when he was working in the Massachusetts General Hospital. From those contacts and from the editorials that had appeared in the American Medical Association Journal, criticizing Dr. Cabot's views on various sociological problems, that the sending to Dr. Cabot of a statement of attitude of organized profession toward the Home Owners' Loan Corporation setup would be unavailing and inadvisable.

Dr. John A. Reed read the following resolutions:

RESOLVED, That the Chairman of the Executive Committee shall appoint a Subcommittee of the Executive Committee consisting of five members of the Executive Committee to study in detail the entire question of prepaid insurance medicine as conducted by or may be conducted by or con-

trolled by reputable acceptable physicians, or by local, county or state societies.

Further, The Committee so appointed shall investigate so far as possible the following points: The need of such practice, the legality in reference to our Society, workability in other localities, the sentiment of the American Medical Association in regard to medical Society controlled practice, formulation of a plan of prepaid insurance medicine to be used whenever in the future it might be deemed advisable or necessary to undertake such a practice, and such other problems pertaining to this practice or considered by the committee worthy of study.

Further, The Secretary of the Society shall be a member of this subcommittee and act in the capacity of secretary to it.

Further, That the facilities of the Secretary's Office be available for use by this committee.

Further, This committee shall report to the Executive Committee when its work is complete or on call of the Executive Committee and not later than the last Executive Committee Meeting of the current Society year.

In the discussion, the Secretary pointed out that the American Medical Association's attitude was very well known, that the headquarters was unalterably opposed to the development of any prepayment plan for the reason that tacit approval might be given to the United States Government or to any other setup to proceed in organization of clinics. Further, experience showed that great rivalry developed when the organized profession in certain cities in the State of Washington started prepayment clinics. Prices were cut along with salaries of the physicians doing the work. Dr. Olin West, in telephone communication from Chicago, had stated definitely that he would not care to be in a position of influencing any action the Medical Society might want to take, but he offered adverse criticism of the development of any prepayment plan, particularly by the profession of Washington.

Motion was made that the resolutions presented by Dr. Reed be adopted. Seconded.

Dr. R. Arthur Hooe made a motion to amend the resolutions to include in this special committee membership the President of the Society and the Chairman of the Executive Committee. Seconded.

Motion with amendment was duly adopted."



Gov. Ex. 203 is a telegram from John F. Hayes to Dr. William C. Woodward, dated October 29, 1937:

"Group Health Association medical staff announced.

Doctors Brown, Raymond E. Selders, Allan E. Lee, Edmond D. Wells, R. Stephen Hulburt, M. Scandiffio. Stop. Home Loan Bank Board has granted \$20,000 a year for two years to association.

John F. Hayes."

Gov. Ex. 114 is a carbon copy of a letter from Dr. Olin West in Chicago, to Dr. C. B. Conklin, Secretary, District Medical Society, dated October 29, 1937:

"DEAR DOCTOR CONKLIN:

I have just been informed that the Group Health Association has announced the names of the members of its professional staff, as follows: Doctor Brown; Dr. Raymond E. Selders; Dr. Allan E. Lee; Dr. Edmond D. Wells; Dr. R. Stephen Hulburt, and Dr. M. Scandiffio. Our records indicate that only two of these men are members of the American Medical Association, namely, Drs. Allan Edward L. Lee and Mario Victor Scandiffio. Both of these men have been reported as members in good standing in the Medical Society of the District of Columbia and Doctor Scandiffio has qualified as a Fellow of the American Medical Association.

I am informed that the Home Loan Bank Board has agreed to provide \$20,000 a year for two years for the use of the Group Health Association.

All of this makes it appear that both the Group Health Association and the Home Loan Bank Board have definitely determined to proceed with their plans in spite of all protests that have been lodged against such procedure.

Very sincerely yours,"

Gov. Ex. 112 is a carbon copy of a letter from Dr. West to W. H. Tibbals, Executive Secretary, Utah State Medical Association, dated October 29, 1937:

"Dear Mr. Tibbals:

I have before me your letter of October 26.

The American Medical Association has very actively opposed the plans of Group Health Association, Incorporated, as has the Medical Society of the District of Columbia, but, in spite of all the efforts that have been put

forth, I have within the last thirty minutes received information from Washington to the effect that the Group Health Association, Incorporated, has announced the names of its medical staff and that the Home Loan Bank Board has agreed to provide \$20,000 a year for two years to finance that association. If you will be good enough to examine The Journal of the American Medical Association for October 2, you will find an article dealing with this matter.

We have taken the position that since the practice of medicine by corporations has been declared to be illegal by many states, no agency of the federal government is justified in using federal funds to finance a corporation that intends to engage in the practice of medicine. I understand that some of the promoters of Group Health Association, Incorporated, have taken the position that since licensed physicians are to be employed who will provide medical service for the members of that incorporation, the corporation can not be considered as practicing medicine. That contention has, of course, no merit whatever.

I regret exceedingly that because of a number of meetings of various kinds that have been held here within the last two or three weeks, which has resulted in most of my time being taken up in attending these meetings and in important conferences, I unavoidably got far behind with correspondence and thus is explained my failure to make prompt reply to your first letter.

I am glad indeed to know that Doctor Edmunds intends to be present at . . .

Gov. Ex. 113 is a letter from Dr. West to Dr. Tibbals, dated November 6, 1937:

"Dear Mr. Tibbals:

I am very glad indeed to have your letter of November 4.

Since I wrote you last, the Group Health Association, Inc., has begun operations. The Home Loan Bank Board has agreed to finance the movement by providing \$20,000 a year from its funds for two years. The names of the medical staff, composed of six or seven men, have been announced. Only two are members of any component county medical society or any constituent state medical association. The American Medical Association and the Medical Society of the District of Columbia have opposed

the movement to the fullest possible extent but without success.

Under the circumstances, we shall take care of the necessary travel expense incurred by you in attending the Annual Conference of Secretaries of Constituent State Medical Associations.

With my sincere good wishes, I am,  
Very truly yours,"

Gov. Ex. 37 was read from to the jury, as follows:

"Minutes of the Meeting of the District Medical Society of November 3, 1937. (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. James A. Gannon, H. R. Schreiber, Albert P. Tibbets, Arch L. Riddick, Frank S. Horvath, H. S. Berton, Henry B. Gwynn, A. Barklie Coulter, S. B. Muncaster, Frank L. Williman, H. P. Ramsey, Fred A. J. Geier, J. H. McLeod, A. J. Connolly, Prentiss Willson, Wm. P. Herbst, W. W. Chase, F. X. McGovern and other members to the number of about 160.

The Minutes of the preceding meeting, held October 27, 1937, were read and approved.

Dr. Sprigg, in continuing, read the following:

WHEREAS, The Bureau of Legal Medicine and Legislation of the American Medical Association has made a careful investigation and analysis of the Group Health Association, Inc., and published its report in the Journal of the American Medical Association under date of October 2, 1937; and

WHEREAS, The Medical Society of the District of Columbia is in full accord with the implications therein set forth; therefore, be it

RESOLVED, That the Executive Committee of the Medical Society of the District of Columbia is hereby authorized and directed to take such steps as may be necessary; first, through the American Medical Association and if that fails, second, through its own initiative to inaugurate a program of information through the State Medical Associations and other sources of the dangers of lowering the standards of medical care to be given Government employees in the Home Owners' Loan Corporation organization and other Government agencies as found in the rules of the Group

Health Association, Inc., and many other reasons why it is contrary to sound public policy.

Dr. Sprigg reiterated that the only way to combat this thing would be through the aid and influence of the medical men all over the United States.

Dr. Sprigg in continuing read further recommendations from the Executive Committee.

Upon motion by Dr. Prentiss Willson, duly seconded that the recommendations be considered seriatim. Adopted.

Dr. Stanton was asked if he wished to withdraw his resolutions. He said he did not.

Dr. Prentiss Willson said he wished to endorse Dr. Stanton's resolutions and he hoped it would prevail. He thought there were three propositions which came before the Society which offer a way out of the wilderness, which he did not see in the elevation of the dues. He did not feel that an Executive Secretary would have any effect on the situation. He felt that it was common sense to find out where the Society stands legally in this matter. The thing is either legal or it is not legal. He thought the financial resources of the Society should be conserved so as to obtain that legal opinion. If the matter is illegal it should be ascertained how it may be successfully attacked in the courts. He thought that was common sense. Second, he was of the opinion that the Society should have some plan to offer whereby the public may be able to obtain better medical service. 'Certainly we can give them a better staff than the one published for the H. O. L. C.' The third thing had to do with the American Medical Association. The Home Owners' Loan Corporation plan was like an illegitimate child left on our doorstep. It is not necessary for us to board it for the rest of its life; the matter is for the public as a whole and the police in this situation should be the American Medical Association. He felt that the thing for the Society to do, tonight, would be to pass resolutions demanding that the American Medical Association do something about it. 'Then if the A. M. A. refuses there are ways to influence politicians, gentlemen—politicians listen to votes.' He cited the action of the House of Delegates of the A. M. A. on the contraception question. 'Let us say to the A. M. A., if you do not accept our demand and do something we are going to approach directly every state medical association in the country and we are going to demand from

them that they demand from you that you take action in this matter.' 'That in my opinion is the answer to the H. O. L. C. and not to put in a fulltime executive secretary unless he might be a Farley, Roosevelt, etc. \* \* \*

Dr. R. Arthur Hooe would ask Dr. Willson a question. 'In the event that it is found to be legal would you tell us what you recommend?'

Dr. Willson said that assuming that it is found to be legal then the only thing for the Society to do would be to adopt and give the public something very much better.

Dr. Hooe, in continuing, stated that he wanted to support the preliminary remarks made by Dr. Stanton, support the remarks made by Dr. Vann and certain remarks made by Dr. Willson. The most important thing was to impress upon the minds of the members that this problem was a national problem. 'If there is something this Society can do and will do to impress that upon the American Medical Association it is of the greatest vital importance. Under new business it will be vitally important that I, as chairman of the C. C. & I. M. Committee, bring a matter to your attention involving the stepping in of that committee in a matter in connection with the H. O. L. C. In the meantime I sincerely trust that Dr. Stanton's resolution, as I have followed it carefully, will not carry.' He felt that it would be psychologically deadly for the Medical Society to step in and do the things suggested in Dr. Stanton's substitute. Public opinion would be that the members of the Society were failing to get funds in their pocket book. He thought it wise to wait a little while before stepping in; that it must be taken into consideration that the Society appearing as a complainant should realize that it is not consistent with the charter, which is created to incorporate the Society for the sole purpose of advancement of medical science. The charter would probably be taken away and the Society's property would immediately be attached. Therefore, Dr. Hooe was of the opinion that the Society must step cautiously. Dr. Hooe said the membership should not think for one moment that the Executive Committee was not busy with this matter. For months the Committee has worked diligently and will continue to do so.

Dr. Stanton said he did not mean to give the impression that the committees were not busy.

Dr. Philip A. Caulfield pointed out that concerted effort should be made to get within the membership of the Society



some 600 or 800 members of the profession who are not on the rolls. Many of these men don't belong because of indifference and some feel that the Society does not offer them anything. It now so happens that their livelihood is jeopardized. He thought this was an opportune time to make a drive to get these men in the Society. He quoted a form letter that should be circularized to the prospective members stating the situation that has arisen and urging these men to become members of the Society. "Unless we take that action we are going to have a lot of men jumping over the fence when this thing gets too big for us."

Now I will omit something and turn to the next page.

Mr. Leahy: I think they have been talking so much about this resolution, the Stanton resolution on page 3, it might be well to go back to that.

Mr. Lewin: Do you wish me to do that?

Mr. Leahy: Please.

"Dr. William J. Stanton was recognized in the discussion. He offered the following substitute for the recommendation of the Executive Committee:

WHEREAS, It is reported to the Medical Society of the District of Columbia that the Group Health Association, Inc., a corporation organized under the laws of the District of Columbia proposed to and is now engaged in the practice of medicine in the District of Columbia, Maryland, Virginia and possibly other states; and

WHEREAS, In the Journal of the American Medical Association on October 2, 1937, Volume 109, pages 39B to 46B, an article was published disclosing in substance that the said Group Health Association, Inc., cannot be licensed to practice medicine in the District of Columbia, and that the United States District Attorney for the District of Columbia and the Corporation Counsel for the District of Columbia have both held that a corporation cannot lawfully engage in the District of Columbia in the practice of a profession that requires licensure or registration as a condition precedent to the lawful practice thereof, even though the corporation undertakes to practice through licensed or registered agents; and

WHEREAS, The Executive Committee of the Medical Society of the District of Columbia has made certain recom-

mendations to the Medical Society for the District of Columbia regarding the said Group Health Association, Inc.; and

WHEREAS, Said recommendations do not indicate that the said Executive Committee made a complete and thorough investigation of the purposes and activities of the Group Health Association, Inc.; and

WHEREAS, Said recommendations do not disclose that the said Committee had or obtained the advice and assistance of counsel; and

WHEREAS, The said article that appeared in the Journal of the American Medical Association makes no recommendations whatever as to what, if any, steps this association should take in the premises; therefore, be it

RESOLVED, By the Medical Society of the District of Columbia at a meeting duly called on the 3rd day of November, 1937, that the recommendations of the Executive Committee be recommitted to said committee, and that said Executive Committee is hereby authorized and directed to investigate and determine whether or not in its judgment the Group Health Association, Inc., is engaged in the unlawful practice of medicine in the District of Columbia as prohibited by Section 152 of the Code of the District of Columbia, 45 Stat. 1338, Chapter 352, Section 41, February 27, 1929; and that said Executive Committee is hereby authorized and directed to obtain the assistance and advice of counsel in its investigation of the said Group Health Association, Inc., and to institute and prosecute in the name of the Association and/or for its benefit, and/or for the benefit of the members thereof, and/or in the name of the said Committee; as such Committee in addition to the names of one or more individual members of the said committee, such actions as in their judgment and discretion may be deemed appropriate and proper for the suppression of the unauthorized practice of medicine in the District of Columbia; and be it

FURTHER RESOLVED, That the said Executive Committee should be and is hereby instructed that in instituting and prosecuting such actions, no exceptions should be made as to any firm, person and group or class of business or occupation which such person, persons or organizations are alleged to engage in the unauthorized practice of medicine and in which the said Committee feels action

should be instituted whether for declaratory judgment, injunction or other relief; and be it

FURTHER RESOLVED, That for the purpose of prosecuting any such action or actions so instituted by said committee, the said committee shall continue in office as a Standing Committee of this association until the conclusion of such litigation, and that said committee shall be charged with the conduct of such litigation to a conclusion, and that the necessary expenses thereof shall be defrayed by this association; provided, that no member of said committee shall receive any remuneration for services in such connection.

Motion was made that the foregoing resolutions be adopted. Seconded."

Mr. Lewin: Is that satisfactory?

Mr. Leahy: Yes.

Mr. Lewin: Now, turning back to page 8. Have you something, Mr. Richardson?

Mr. Richardson: Yes, on page 3; it is not on the same page in your record. There is a notation that this resolution was withdrawn.

Mr. Lewin: That is right. That is the reason I didn't read it. Anything else?

Mr. Richardson: Yes. You had gotten to the point of what Dr. Caulfield said.

Mr. Lewin: Yes. Do you want me to go along with that?

Mr. Richardson: Yes, if you will.

"Dr. J. H. McLeod felt the Society should attempt to find out how much backing the H.O.L.C. has from the United States Government. Personally he was sure they had plenty of backing from the Government and when the Society fights this thing it is fighting the Government. He urged caution. They can very quickly make it legal.

Dr. Oscar Wilkinson said he felt that if the members of the Society are going to be sheep they should be sure they are going to be sheared. In answer to Dr. Hooe's remarks about them taking the charter, he felt that if something is not done they will take more than the charter. He said he was entirely in accord with what Dr. Willson had to say about the A. M. A. 'This illegitimate child has been placed on our steps but it certainly is not our baby. We should tell the A. M. A. what our opinion is and their duty in

this matter.' Dr. Wilkinson said he was in accord with what Dr. Vann had to say and that all members should contact their friends in the profession in the states soon. In answer to the question as to whether the Government is behind this proposition, he would say 150 per cent behind it. 'If we permit this to go through it is the first step toward socialization of medicine which is an injustice to the public and the profession. We should certainly not permit ourselves to lie supinely on our backs and let this thing be lauded over.'

Dr. W. Warren Sager said he felt that if this was allowed to go on several Government departments would align themselves. He could see nothing wrong in obtaining legal opinion. He felt no more time should be lost than possible. He thought it well to engage a full-time Executive Secretary and an insurance setup could be so arranged as to provide medical care. He agreed that the society could provide a better staff than that announced by the Group Health Association. He said he was agreeably surprised to hear of the response received by Dr. Vann from his communication with fellow-members of the profession. He felt that the Society needed every man they could get as members.

Another member said it was announced that the Group Health Association would save the H. O. L. C. and other affiliated bodies that they will save them in sick leave. They will show in actual figures that the people will stay out half as much as the privately treated patients. In his opinion that statement should have been answered in the press. Another issue to his mind was the check-off that was contemplated. Monthly withdrawals were to be made from the salaries before turned over to the employee. To him there seemed to be a question as to whether it is legal to check off that amount.

The Chair stated that the questions could not be answered at this time.

Dr. Sprigg said he was thoroughly in accord with the general principles that have been suggested. He felt, however, that the problem confronting the medical profession was different than the proposition which was facing the legal profession when the banks were practicing law. He said the people of the District haven't any vote and no one interested in them. It was his opinion that the Society would have to go behind the scenes and get the politicians

interested. He suggested that the best way to attack the problem would be through the Medical Associations throughout the United States, and all the Executive Committee was asking was authority to do this.

Dr. A. C. Christie was recognized. He said it seemed that everyone felt that something should be done about this matter. He felt that the Society ought to do something wise rather than something foolish that will do it more harm than good. In answer to Dr. Willson's remark that the members have been a bit hysterical, he felt that they had something to be hysterical about. He agreed with Drs. Hooe and Sprigg in this matter; that to pass a resolution simply to sue somebody would be unwise. He agreed with Dr. McLeod that the group would simply have another law passed in order to carry on. He thought the best way would be to pass the resolutions presented by the Executive Committee if the committee would go energetically about it. He stated that the whole feeling of the Society is that the Executive Committee has not been energetic enough; the committee could contact the A. M. A., possibly send a committee to Chicago, and go at the situation as if they meant to bring it about. He was of the opinion that the American Medical Association ought to help the local profession. He did not agree with Dr. Willson in his remarks about the Executive Secretary. He thought an Executive Secretary should be on the job. He was sure the Society would not get anywhere by filing suit. 'What ever judgment you get against them they are going to continue anyway. Let's pass this resolution of the Executive Committee but let's tell our Executive Committee we want them to be on the job and be a little more energetic so far as we can see, than they have been before.'

Dr. Sterling Ruffin thoroughly agreed with Drs. Stanton and Willson but did not feel that the time was opportune for this procedure. Later on if Dr. Stanton would introduce his resolutions Dr. Ruffin said it would give him pleasure to support it, but he was opposed to the Society getting mixed up in the courts at this junction. He felt there would be no end to undesirable publicity and misunderstanding. He thought the most effective way would be to contact representatives and senators while they are still at home, through the physicians in the states. He said that was the plan which the Executive Committee has in mind at the moment. He hoped that Dr. Stanton's sub-



stitute would be postponed for consideration at some later date.

Dr. W. J. Stanton said he was very much gratified that his substitute motion had caused so much discussion. He would like to compromise the matter to the effect that if he could be assured that the Society would empower the President to appoint two members to contact the American Medical Association in person, and also to contact the President of each Medical Society in the United States, and bring back a report at the next regular business meeting of the Society, he would withdraw his motion until that time.

Dr. E. J. Cummings would second this suggestion.

Dr. Prentiss Willson would amend to include that these emissaries should be armed with a request or demand for action by the American Medical Association.

The Secretary said he knew personally that the American Medical Association authorities have been making some effort to contact the Society and have been keeping in touch with the local situation. He said that Dr. Olin West, the Secretary, had called him on the telephone from Chicago on several occasions; further that Dr. R. G. Leland, Director, Bureau of Medical Economics, was in his office about 10 days ago discussing the local situation. The A. M. A. has a local representative who also has been very much interested. He merely cited this to show that the Association is interested in the local situation. He personally made contacts with certain state secretaries. Dr. Holman Taylor, Secretary of the Texas State Medical Association, in his letter expressed deep interest in the local problem. He pointed out that on the 18th and 19th of November the annual Conference of Secretaries would be held in Chicago. At this time there would also be in attendance some Presidents and editors. In addition, at that time there is a meeting of the Board of Trustees, which board has power to act for the Association during the interim that exists between the meetings of the House of Delegates. He felt that the strategic time would be the 18th and 19th of November. He said he was not attempting to suggest that the two delegates would include himself and Dr. Yater, whose expenses are paid by the A. M. A., but he merely wished to bring the matter to the attention of the members.

The Chair at this point stated that the question before the house was 'if the Society would appoint a committee

of two at this meeting to go to Chicago to get in touch, contact immediately members of the American Medical Association to find out what they would do, or can do, or won't do, and whether they are with us or against us, that Dr. Stanton is willing to withdraw his substitute.'

Dr. Prentiss Willson said he felt that did not cover the situation. He made a motion to the effect that the President be authorized to appoint a committee of three (3) members to retire from the hall, one of whom shall be Dr. W. J. Stanton, to draft suitable resolutions expressing the view of this Society, and report back to the meeting tonight. He felt that the matter was too important to be done in a haphazard way.

Dr. Willson's motion was seconded.

Dr. Hooe would inquire if it is felt that any three members are competent to retire and draft an expression of this Society in so short a time. He did not think it was possible.

Dr. Willson said it was not his intention to limit the emissaries. He felt that the resolution should be carefully worded.

Dr. Willson's motion was finally adopted. The Chair appointed the following committee to retire from the room and prepare suitable resolutions: W. J. Stanton, Sterling Ruffin, F. X. McGovern.

Later in the evening Dr. Stanton made the following report of the committee's deliberations, presenting the resolutions:

That the President of the Medical Society of the District of Columbia appoint a committee of two members to go to Chicago as promptly as practicable and lay before the proper officials of the American Medical Association the views of this Society with regard to the activities of Group Health Association, Incorporated, including:

1. That inasmuch as the movement threatens to be nationwide in its scope, and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine.

2. That in view of the tremendous import of the Group Health Association movement to the membership of the

Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Incorporated.

3. That the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association.

4. That the American Medical Association give a definite and immediate expression of its intended action in this matter.

Upon motion, duly seconded, the foregoing resolutions submitted by the special committee were adopted.

5. That a special committee be appointed by the President, consisting of himself, as chairman, and the chairmen of the standing committees, to urge upon the hospitals, through their medical staffs and/or boards of directors, the wisdom of endorsing the stand of the Medical Society in the matter of lay corporate practice of medicine and of excluding from their approved lists the names of any physicians in the employment of or connected with, any corporation, group or individual, practicing medicine directly or indirectly in violation of the provisions and spirit of the Constitution of the Medical Society of the District of Columbia.

Dr. Prentiss Willson would inquire if the foregoing was in lieu of the recommendation concerning the sending of a letter to the Boards of Directors and Medical Staffs of the local hospitals, as published to the membership on the agenda. He said he intended to move a substitute motion for the letter which appeared on the agenda. If the Society approved the motion proposed by Dr. Sprigg it would be inexpedient to send the letter out at the present time. He was of the opinion that the Hospital Committee, composed of members of the Society working on hospital staffs in Washington would be a more suitable committee to handle the matter. He offered the following substitute:

WHEREAS, The Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can pre-

vent patients of physicians in its employ being received in the local private hospitals; and

WHEREAS, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

WHEREAS, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

RESOLVED, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict.

Dr. A. C. Christie seconded the above resolutions, but would ask that these resolutions be a substitute for the Resolution submitted by Dr. Sprigg and also for the letter that has been published to the membership.

Dr. Willson said he accepted this.

Upon standing (counted) vote Dr. Willson's substitute resolutions were adopted in lieu of the letter recommended by the Executive Committee and the resolutions presented by Dr. Sprigg. (Vote: 68 Ayes; 53 Noes.)

In discussion, Dr. Sprigg pointed out that the letter contained on the agenda is very simple, very concise, brings no charge against anybody, and suggests no charge or injury, but suggests to the hospitals that they take action in line with what the Society has done; their attention is called to the Constitution and suggestion is made that they may see their way clear to make such rules. He did not see that any harm could result by contacting the hospitals

through the Boards of Directors and Medical Staff, as recommended by the Executive Committee, as follows:

Dr. Sprigg, in continuing, stated that this letter was the simplest thing the Society could send and he felt sure it could not offend any hospital.

Dr. E. Kirby Smith thought the letter could cause a lot of unfavorable comment against the Medical Society and the profession by the lay boards. He felt that this information could be conveyed to them orally, then they would have nothing to fight back with.

Dr. R. Arthur Hooe said he was of the opinion that Dr. Willson's substitute offered some sound points; one in particular that which suggests that this committee be composed of members of the hospital staffs. He thought it was inconceivable that the hospitals would not acquiesce to reasonable principles. Another objection he had to Dr. Willson's resolution was that the committee is delegated to take its time and report back to the Society. He said the letter as proposed by the Executive Committee had been very carefully written.

Dr. Willson took exception to Dr. Hooe's remarks about the letter being carefully written. He called attention to the first sentence:

'The Medical Society of the District of Columbia desires to call your attention to Chapter IX, Article IV, Section 5 of the Constitution, as follows:'

Dr. Willson said it was not stated what Constitution was involved; whether the Constitution of the United States, etc. In reference to the phrase in the second last paragraph 'best possible medical care,' Dr. Willson was of the opinion that the impression would be gained that the Society was scared to death and were trying to get the help of the Boards. In addition he felt that the letter carried a veiled threat to the effect that if the hospitals did not comply the Society would unstaff them. He said he hoped the Society could control the members; sometimes he had a little doubt.

Dr. Sprigg informed Dr. Willson that 'the' should have been 'its.'

Dr. John A. Reed said that for once he believed Dr. Willson to be paradoxical. He felt that if this was referred to the Hospital Committee there would be further delay.



He was informed that every hospital in the city was co-operating with the medical profession against the Group Health Association, with one exception. To his mind the letter as written was a very kindly letter. He could see no objection to the letter being sent to the hospitals.

Upon standing (counted) vote Dr. Willson's substitute resolutions were adopted in lieu of the letter recommended by the Executive Committee and the resolutions presented by Dr. Sprigg. (Vote: 68 Ayes; 53 Noes.)

Dr. Allan E. Lee, tendering his resignation as an Active Member, as follows:

October 30, 1937.

Dr. C. B. Conklin, Secretary, D. C. Medical Society, Washington, D. C.

DEAR DOCTOR CONKLIN:

I hereby submit and tender my resignation as a member of the medical Society, to take effect at once.

Respectfully, Allan E. Lee, M. D.

It was explained that this was the first reading of Dr. Lee's resignation.

Dr. Mario Scandiffio, tendering resignation as an Active Member of the Society, as follows:

October 29, 1931.\*

Dr. C. B. Conklin, 1718 M Street, N. W., Washington, D. C.

DEAR DOCTOR:

I hereby tender my resignation as a member of the Medical Society of the District of Columbia.

This is to take place immediately.

Very truly yours, M. Scandiffio.

Note: \*Letter received in the Society's office on October 30, 1937.

This was the first reading of this resignation.

Dr. R. Arthur Hooe was recognized. He said, in reference to the two resignations (Drs. Scandiffio and Lee) of

Active Members, that he thought that a special meeting of the Society would be called at an early date, but in view of the fact that reports would have to be made at a regular meeting of the Society, the matter would have to wait. He said that Drs. Scandiffio and Lee were engaged by the Home Owners' Loan Corporation to serve in the clinic of the Group Health Association. A registered letter was mailed to both doctors, as follows:

'You are hereby directed to appear before the Compensation Contract and Industrial Medicine Committee, on the evening of Thursday, November 4, 1937, at 8 p. m., in the Medical Society Building.'

Dr. Hooe said he thought the members would be interested in having this information. He said his committee would meet and prefer charges against these two members for violation of the provisions of the Constitution.

C. B. Conklin, Secretary."

Gov. Ex. 46 is a letter from Thomas E. Neill, President of the District Medical Society, to Dr. J. Ogle Warfield, Jr., Chairman, Hospital Committee, Washington, D. C.:

"November 5, 1937.

DEAR DOCTOR WARFIELD:

This is to inform you that the enclosed resolutions were passed by the Society, in session on the evening of November 3, 1937. Your prompt attention to this matter is requested.

Very truly yours, Thomas E. Neill."

Enclosed is a copy of the resolution adopted by the Medical Society of the District of Columbia, in session on the evening of November 3, 1937.

The Court. Hasn't that been read?

Mr. Kelleher. It has been, but I should like to read it again, your Honor.

The Court. I don't think we should repeat.

Call the jury's attention.

Mr. Kelleher. May I call attention to what it is?

The Court. Call their attention.

Mr. Kelleher. To what it is?

The Court. Yes.

Mr. Kelleher. It is the resolution dealing with an apparent means of hindering the successful operation of Group Health Association, Inc., by preventing patients of physicians in its employ being received in the local private hospitals.

Mr. Leahy. Is that the Willson resolution?

Mr. Kelleher. Yes.

Mr. Lewin. Yes, that is the Willson resolution, the one that appears on the indictment.

Gov. Ex. 115 is a telegram from Olin West in Chicago to Dr. Robert A. Hooe, dated November 4, 1937:

"Woodward Leland and I will be glad to see you ten a.m. Saturday stop Doctor Hayden will not be able to be present.  
Olin West."

Gov. Ex. 116 is a telegram from Hooe to West, dated November 5, 1937:

"Will arrive in Chicago 820 a.m. November 6.

R. Arthur Hooe."

Gov. Ex. 117 is headed "Conference re Group Health Association, Inc., November 6, 1937":

"The conference convened at 10:20 A. M. in the office of the Secretary and General Manager of the American Medical Association with the following in attendance: Dr. R. A. Hooe and Dr. F. X. McGovern of the Medical Society of the District of Columbia, and Dr. Olin West, Secretary and General Manager, Dr. W. C. Woodward, Director of the Bureau of Legal Medicine and Legislation, and Dr. R. G. Leland, Director of the Bureau of Medical Economics, of the American Medical Association.

Abstract of the discussion follows:

Doctor Hooe. The Medical Society of the District of Columbia is now and always has been mindful that as a result of the things accomplished by the American Medical Association, scientific American medicine has reached highest peak reached by any civilized nation.

The Medical Society of the District of Columbia at its regular meeting held November 3, 1937, adopted the following resolution: That the President of the Medical Society of the District of Columbia appoint a committee of two

members to go to Chicago as promptly as practicable and lay before the proper officials of the American Medical Association the views of this society with respect to the activities of Group Health Association, Inc., including: First, that as the movement threatens to be nationwide in its scope and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine; secondly, that in view of the tremendous import of the Group Health Association movement to the members of the Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Inc.; thirdly, that the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association; fourthly, that the American Medical Association give a definite and immediate expression of its intended action in this matter.

The operations of Group Health Association, Inc., began on Monday last. Two members who contracted with Group Health Association, Inc., were members of the Medical Society of the District of Columbia, and a third had sent in his application which has been withdrawn within the past ten days. There is nothing to be done about this third member at the present time. The resignations of the other two were received by the Medical Society of the District of Columbia within the week. A letter was sent to each of them asking him to appear before the Compensation, Contract and Industrial Medicine Committee. They did not appear but the committee received a communication from one of them. The committee unanimously recommended to the executive committee of the Medical Society of the District of Columbia that disciplinary measures be taken.

Doctor Woodward raised the question as to whether the notice to these members had told them of the charges that were to be preferred against them and stressed the necessity for following strictly the procedure as laid down in the constitution and by-laws of the Medical Society of the District of Columbia. Further discussion was deferred to a time when it could be gone into in detail by Doctor Woodward.

Doctor Hooe: There is no use to go into the demerits of the HOLC health movement since the attitude of the Medical Society of the District of Columbia is known, but it is necessary to discuss the difficulties that confront the medical profession in Washington because of this movement which is the entering wedge of socialized medicine in the United States.

Doctor Hooe, in reply to Doctor West's statement that the inference in his statement has been that the American Medical Association has done pretty well as a scientific organization but has not concerned itself with more than scientific medicine, said that the statement was made in the broadest possible terms. Doctor West was not absolutely sure what the record will show, but he was inclined to think that the American Medical Association had been fighting HOLC before the Medical Society of the District of Columbia became actively interested.

Doctor Hooe then presented figures to show that out of a total population of 619,000 in Washington, after certain deductions were made for government employees, negroes, etc., there remained a total white population of only 189,127 including indigents and that all classified physicians of Washington numbered 2,100.

Doctor Hooe: The people in Washington are without suffrage, the entire city, including prosecuting attorney and corporation counsel, being selected by the Administration, and it is reasonable to expect such appointees to cater to the desires of those to whom they turn for their bread and butter, so that this matter has to be gotten at through Congress. Who is best qualified to reach the man in Congress, the little state medical society at Washington or the doctor at home through the states? Who will suffer from the experiment? Will not the entire medical profession? It is quite clear what will happen to the medical profession at Washington.

Doctor West: Doctor Hooe has not made one statement of any kind that the American Medical Association has not fully considered and acted on where possible.

Doctor McGovern: Since the Group Health Association, Inc., has started, the medical profession in Washington has become acutely aroused and the question is what shall the Medical Society of the District of Columbia do? The resolution introduced before the Medical Society of the District



of Columbia suggested immediate legal action, but some thought that possibly some other plan might be offered. The Medical Society of the District of Columbia is in a quandry to know what to do and is seeking guidance here.

Doctor Hooe: Some young people in the Medical Society of the District of Columbia are very much aroused and one of them introduced a resolution which stated in substance that the Society should get busy and prosecute at once regardless of what happens. The resolution was withdrawn only on condition that two delegates be sent immediately to Chicago to confer with the American Medical Association to see what could be done about this.

Doctor West: It is quite possible that the situation in the District of Columbia is no worse than that which may develop in some other places, as for instance in Denver. Denver has relatively as large a government population as Washington and, perhaps, larger. In some states work is being done in contacting individual members of Congress on this matter: An effort is being made to see if members of Congress can not be stimulated to oppose this movement.

Doctor McGovern presented a statement to indicate the uselessness of Washington men attempting to contact men in Congress.

Doctor McGovern: It seems that the intelligent way to go about this thing is politically and it would seem the wisest thing to do would be for the parent organization to contact the private physician of every congressman and senator and carry on a campaign that way.

Doctor West: Political attempts always bring reprisals.

Within a few days there will be a conference of secretaries and editors of state medical associations and one of the things that will be discussed is this HOLC matter. The Board of Trustees has been considering this thing for a long time, and has given instructions to oppose it.

To Doctor Hooe's question as to whether or not the American Medical Association has exhausted all means of combating this thing, Doctor West replied that it certainly had not and had no idea of quitting.

Doctor Hooe: Do you not believe that the press all over country should be directed to state to the people in no uncertain terms the fact that the American Medical Association opposes such practice and why?

Doctor West: A conference of capable newspapermen was held here a few days ago and this among many other subjects was discussed, but the principal interest of the newspapermen is the method of securing and publishing news. There are radicals among newspapermen as well as among congressmen and physicians. The Committee of Physicians, a self-constituted body, has secured signatures of about 400—out of 106,000 members of the American Medical Association—physicians evidently to show that the policies of the American Medical Association do not represent the feeling of a large element of physicians. Newspapers are playing that up.

Doctor McGovern: The Society feels very definitely that it should have some kind of expression from the American Medical Association as to what it might do or is doing or can do in relation to the national aspects of this thing.

Doctor West: The American Medical Association tried to utilize the services of some of the most important people in Washington to get at the bottom of this thing when it was first started, before the Medical Society of the District of Columbia ever raised a finger about it, but we could not get a copy of the contract nor information that was definite or authentic in spite of all efforts to do so. This isn't so easy that all that is necessary is for the American Medical Association to say something. The American Medical Association will do the best it can. Its views are thoroughly understood in official circles in Washington, but that doesn't seem to make any difference.

Doctor Hooe: Their own legal bureau informs them it is entirely legal.

Doctor Woodward: No question about the illegality of it.

Doctor Hooe: Assuming that it is illegal, this Administration can very easily make it legal.

Doctor Woodward and Doctor West did not agree that it would be easy to legalize it.

Doctor West: Nothing can be accomplished by a great public upheaval. A very considerable number of the newspapers of this country are more or less convinced that there will have to be some extremely radical changes in medical practice, including some form of insurance and some form of government insurance. The American Medical Association does not agree. It does not approve any compulsory sickness insurance and has great fear of voluntary sickness insurance because the history of compulsory sickness insur-

ance shows that voluntary sickness insurance has been the forerunner.

Doctor McGovern: Do you feel that the medical profession is rendering medical service to the people as well as it could or should?

Doctor West: It is doing it better than any other profession on the face of the earth. The situation will never be ideal because many persons won't take medical service when it is easily available. Replies to a questionnaire sent out by the American Medical Association definitely disproved the statement to the effect that one-third of the people of this country were not getting and could not get needed medical service.

Doctor McGovern: Do you think that this country will eventually escape sickness insurance?

Doctor West: I don't know, but I am quite certain that sickness insurance systems in older countries are not operating as satisfactorily as some would have us believe and I think that it is probably true that some of them are losing ground.

Doctor McGovern read an abstract from a paper he had presented over four years ago as retiring president, showing the indifference of medical organizations.

Doctor West: The only organization in this country that did not exhibit smug indifference to the trend toward centralized control of medicine was the American Medical Association.

Doctor McGovern: Do you feel that everything is all right in American medicine today? Realizing that the United States is now the only large nation that has not some form of centralized control of medicine, what is behind it as far as the people are concerned: Why all these different types of practice springing up in the United States if behind it there does not seem, in the minds of laymen and of some physicians, to be some need?

Doctor West: The American Medical Association thinks there is 'a need.' There always has been and always will be as long as there are advances in medical knowledge. But the organized medical profession has tried hard to have the need met and has done very well under all the circumstances.

Doctor McGovern: In Washington there is the Group Health Association and behind it, possibly, socialized medicine. Those two situations confront the physicians in Washington who are determined to do something about the mat-

ter. How are they going to go about it? The advice and cooperation of the American Medical Association is solicited.

Doctor West: The society has had the help of the American Medical Association and will continue to have it.

Doctor McGovern: The question in the minds of some is as to whether it should be fought legally.

Doctor West: It is my purely personal opinion that somebody has to fight it legally. If the American Medical Association does it, it may arouse forces that will make it more difficult.

Doctor Hooe: Why not the Medical Society of the District of Columbia by the same token?

Doctor Woodward: I suggest that you have competent legal counsel advise you. The primary move is clearly to see whether your district attorney or your corporation counsel or the commissioners or the board of licensure or the insurance commissioners will act. Whether or not they will act can not be determined until the facts are formally laid before them.

Doctor McGovern read from the Washington Evening Star an article concerning this matter. During the discussion that followed it was pointed out that Corporation Counsel Seal emphasizes the fact that he will not be concerned whether a corporation instead of an individual is engaged in medical practice. The article in the Washington Evening Star states that Mr. Seal will begin the study of the Group Health Association, Inc., to determine whether it is operating an insurance plan and whether it should be licensed by the District Insurance Department. The suggestion was offered that it may be the duty of the United States District Attorney or some other body to act. There followed discussion concerning the powers of the Medical Society of the District of Columbia and its right to institute proceedings. Doctor Woodward offered to furnish citations regarding corporations engaging in medical practice.

Doctor McGovern: There is a great sentiment in the Medical Society of the District of Columbia to formulate some plan.

Doctor West: I don't know whether or not you remember that I suggested, when in Washington some time ago, that you give that idea some consideration, but, after thinking about it later, I decided that probably I shouldn't have offered that suggestion because you already formulated a

plan and I am not convinced that that plan did not have something to do with the stimulation of this HOLC movement. A plan almost inevitably tends to create a sentiment for the formation of other similar plans.

Doctor McGovern: There is a very definite sentiment to initiate some kind of plan. There are three or four different ones in the making now, and it is necessary to ask you gentlemen how far we may go along.

Doctor West: If you go into the corporate practice of medicine, you are on the same ground as the HOLC scheme.

In reply to Doctor McGovern's question as to whether or not the Medical and Dental Service Bureau is practicing corporate medicine, Doctor West stated that that scheme is supposed to help people meet bills. It is more concerned with payment of bills than with practice of medicine.

Doctor Hooe: Let us assume now that the plans suggested thus far are not agreeable. What can be done to meet the situation?

Doctor West: I can only tell you again that you should go to every official agency concerned in this thing and get them to look into it with a view not only as to whether or not it is an insurance scheme subject to an insurance law but also as to whether it is not definitely a corporation practicing medicine.

Doctor West: There are medical societies in this country that have notified the people in their communities that the members of the society will take care of them and that if they can pay, all right, but if they can't pay, they will be taken care of anyhow.

Doctor Hooe: In the matter of the HOLC, what is your future program?

Doctor West: It is just exactly the same as it has been all the time. We shall continue fighting it every way we can. We are going to get all the help we can get. We are at least going to keep on until we are instructed otherwise.

Doctor Hooe: Executive Committee recommended that a letter be addressed to the medical boards of the various affiliated hospitals in Washington, calling attention to the HOLC health group, insisting that the hospitals take cognizance of it, and, among other things, calling attention to the fact that the physicians employed by such groups are not acceptable to the Medical Society of the District of Columbia.



In reply to Doctor McGovern's question as to how far the Medical Society of the District of Columbia might go in controlling the hospitals, Doctor West expressed some doubt that the society can effect such control.

Doctor Hooe: Is it not, in your opinion, most reasonable that the hospitals should acquiesce in this matter?

Doctor West: It is reasonable that they should do it but as to whether or not they will, that's another question. Suppose they don't?

Doctor Woodward: You would be absolutely certain to elicit at least an attempt at legislation in Congress that would prevent your doing what you propose.

Dr. Hooe: At a meeting of a group of the Medical Society of the District of Columbia last Sunday night it was brought out that all the civilian hospitals in Washington except, probably, one had fallen right into line, which was very gratifying.

Doctor McGovern: Is there any objection if the Medical Society of the District of Columbia goes ahead and carries on a campaign throughout the states?

Doctor West: In thirteen days there will be a conference of secretaries and editors of constituent state medical associations at which many other officers of constituent state and of some component county societies will be present. The whole story of the HOLC movement will be brought before the Conference and the point of view of the members of the Conference can be obtained and presented better than by spending money in written material. The members of the Conference will be given the entire picture, and Doctor Conklin and Doctor Yater, members of Conference, will be given full opportunity to say anything they want to say.

Doctor Hooe: What do you anticipate the reaction of the members of the Conference will be?

Doctor West: Opposed to the HOLC scheme. They will be asked definitely to carry on.

Doctor Hooe: What do you think their carrying on will consist of?

Doctor West: I am going to ask that they get into contact with their congressmen to make them understand what is involved. Some of them are already doing that.

Doctor Hooe: You are going to try to get the Board of Trustees to agree that some definite campaign must be waged through Congress?

Doctor West: A campaign does not get you any place. It simply redoubles the effort of every agency opposed to you. I think that the Medical Society of the District of Columbia may not have put its position in the papers in Washington as clearly as it should have done. It should be very clearly stated in words everybody can understand that the interest of medicine in this thing is actually the interest of the public. The promotion of the HOLC scheme will actually tend to destroy the private practice of medicine and the people will pay the penalty.

Doctor Hooe: Can we say we have the backing of the American Medical Association in that?

Doctor West: You can say so very definitely, as that is absolutely in keeping with the policies of the organized medical profession in this country.

It was again urged that this matter be presented to the proper officials in Washington so that they take up the question of a corporation practicing medicine. Mention was again made of the desirability of contacting the proper government officials through physicians, who should, of course, know the facts and the argument to apply."

Gov. Ex. 136 is a portion of the proceedings of the board of trustees of the AMA for November 18 and 19, 1937.

Group Health Association, Inc.: As has been previously explained, the federal Home Owners' Loan Corporation has granted \$20,000 a year for two years to the Group Health Association, Inc., to aid it in getting started and to help provide the expensive modern equipment which will be used in the clinic. Thus, the federal government has provided funds to finance a corporation that is to engage in the practice of medicine, in spite of the fact that corporation practice has been declared to be illegal in numerous court decisions, including decisions handed down by federal courts.

Doctor West reported that a committee of the Medical Society of the District of Columbia had visited the headquarters office early in the month for the purpose of conferring with him, Doctor Woodward and Doctor Leland with respect to the Group Health Association, Inc.; that the committee brought what apparently amounted to a demand to the Association to devise further means and ways of opposing the continued operation of the Group Health Association, Inc., and that it was intimated that the American

Medical Association had not concerned itself with anything but scientific matters, in spite of the fact that he and Doctor Woodward had conferred with the District Society in Washington on instruction from the Board; that a write-up had appeared in The Journal concerning the matter; that diligent efforts had been made to develop information concerning the Group Health Association, Inc., and to procure a copy of its contract, and in spite of the fact that the headquarters office, on instruction of the Board of Trustees, had done everything it could to combat the movement on the basis of the fact that it is contrary to the policies of the House of Delegates.

In this connection, Doctor West presented a newspaper account of a meeting held at the Mayflower Hotel on October 30, 'to usher in the Group Health Association, Inc.,' which, it was stated, would open its clinic on the following day for members of the Federal Home Loan Bank Board and Affiliated Agencies. The newspaper contained a statement given out by Dr. Richard C. Cabot, landing group Medical Practice and criticising the medical profession. This matter, he stated, was referred to the Judicial Council, which had requested him to contact Doctor Cabot to ascertain whether or not he was incorrectly quoted in the newspaper item. A letter has been written to Doctor Cabot but thus far no reply has been received.

Doctor Cullen moved that Doctor West be requested to explain the whole matter of the activities of the Group Health Association, Inc., before the Conference of Secretaries of Constituent State Medical Associations and Editors of State Medical Journals on Friday. Doctor Hayden seconded the motion and it was carried."

Gov. Ex. 137 is a photostatic copy of the minutes of the Judicial Council of the American Medical Association, November 12, 1937 (excerpt):

"Dr. Richard C. Cabot and the Group Health Association, Inc.: Several letters of complaint against Dr. Richard C. Cabot, Boston, Mass., were presented to the Council. These complaints had to do with Doctor Cabot's address under the auspices of the Home Loan Bank Board's new Group Health Association as reported in newspapers.

After consideration of the matter, it was moved by Doctor Burns, seconded and carried, that the Secretary of the

Judicial Council be requested to bring the matter to the attention of the Massachusetts Medical Society through its secretary and to write Doctor Cabot that, before the Judicial Council considers any action in the matter, it would like to know whether or not he said the things he is reported in newspapers to, have said in his address at the meeting held under the auspices of the Home Loan Bank Board."

Gov. Ex. 119 is a letter from the defendant West to Dr. Joseph S. Wall, 1864 Wyoming Avenue, Washington, D. C., dated November 9, 1937:

"DEAR DOCTOR WALL:

I am sorry that I have not had opportunity until now to reply to one particular paragraph in your letter addressed to Doctor Woodward under date of November 1,

We have received several letters protesting against the utterances of Dr. Richard C. Cabot at the time of his participation in the meeting held at the Mayflower Hotel under the auspices of the Home Loan Bank Board and the Group Health Association, Inc. It is my purpose to submit all of these communications to the Judicial Council of the American Medical Association at its meeting to be held within a few days.

The diatribe delivered by Dr. Richard C. Cabot at the Mayflower Hotel was strictly in keeping with the record he has made during the last few years. Doctor Cabot does not, apparently, have as many opportunities as were formerly offered to him to deliver himself of his peculiar views. Doctor Cabot is a member and a Fellow of the American Medical Association and it is because of his Fellowship that I am in position to submit to the Judicial Council the several communications we have received. Original jurisdiction over his membership lies with the district medical society of the Massachusetts Medical Society of which he is a member.

We had a very pleasant visit from Doctors Hooe and McGovern and went over very fully the situation that has developed in Washington. As a matter of fact, official representatives of the American Medical Association have done all that they could to oppose the movement whereby a corporation financed by an agency of the federal govern-

ment has been put into the practice of medicine in Washington, and it is our purpose to continue these efforts.

With my sincere good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 156 is a letter from Joseph S. Wall to Dr. Olin West, dated November 11, 1937:

"DEAR DR. WEST:

I want to thank you very much for your letter of November 9th relating to the action of Dr. Richard C. Cabot in lending comfort to the enemy by a remarkable address he made in Washington.

I do trust the Judicial Council will take suitable disciplinary action in the premises as it would seem richly deserved.

The situation in Washington is now very acute and is fraught with most serious implications. Nearly all of our accredited hospitals have in force a ruling that members of the staff and courtesy staff must be in good standing as members of the American Medical Association and this rule has been repeatedly enforced since a legal ruling upholding the right of a hospital to exclude a physician was promulgated by the local Court in the case of Cox versus the Emergency Hospital.

Forty-eight hours ago, on the eve of a Community Chest drive, the threat was held over the head of the Chest officials that the Home Owners Loan Corporation would exercise its influence to prevent all contributions by Government employees unless the hospitals admitted their paid Hessian practitioners. I understand that at a meeting of the Hospital Superintendents with the Chest officials the sentiment seemed to be that the hospitals would admit the patients of Group Health Association but that the privilege of physicians in attendance would be governed by the Hospital rules.

We sincerely hope that the American Medical Association will uphold our hands in an effort to check this dangerous innovation under quasi-government auspices.

Again with thanks, believe me,

Sincerely yours, Joseph S. Wall, M.D."



Gov. Ex. 155 is a carbon copy of the defendant West's reply to Dr. Joseph S. Wall, dated November 16, 1937:

"DEAR DOCTOR WALL:

I am very glad indeed to have your letter of November 11. I fully agree, of course, with the views expressed in your letter with respect to the situation that has developed in Washington.

The American Medical Association has done everything that it could to oppose the institution of the plan that has been placed in operation under the auspices of a federal agency in Washington, its efforts having been initiated months ago. A report on this matter was submitted to the Board of Trustees at Atlantic City, and instructions issued by the Board of Trustees at that time have been carried out as fully as possible and will be persisted in until such time as the Board of Trustees or the House of Delegates of the American Medical Association may issue new instructions.

It seems perfectly apparent that the Group Health movement in Washington is receiving very powerful support, some of which, perhaps, has not yet come into the open.

With my sincere good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 37 was read from to the jury, as follows:

"Minutes of the Meeting of the Medical Society of the District of Columbia, Held November 10, 1937. (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. Cake, Chipman, White, Speer, Ellison, Horgan, Williman, Dowling, Herbst, Neumann, Leffler, Minor, Mason, Brumbaugh, Tribble, Murphy, Thompson, Schreiber and other members and guests to the number of about 90.

The Minutes of the preceding meeting of the Society, held November 3, 1937, were read and approved.

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The Secretary read a communication that had been received from the National Homeopathic Hospital, as follows:

"November 9, 1937.

Dr. C. B. Conklin, Secretary, The Medical Society of the District of Columbia, Washington, D. C.

DEAR DR. CONKLIN :

As the attitude of the National Homeopathic Hospital towards the Group Health Association is apparently not clear to various members of the District Medical Society, I am enclosing a copy of a letter sent today to their president, Mr. Penniman, by Dr. J. B. Gregg Custis; Executive Officer of our Board of Trustees.

Very truly yours, Frances Whitlock Hall, Superintendent."

(Enclosure) :

"November 9, 1937.

Mr. William F. Penniman, Group Health Association, Inc., 1328 Eye Street, N. W., Washington, D. C.

MY DEAR MR. PENNIMAN :

At a Board of Trustees meeting held on November 4, 1937, it was voted that until the Group Health Association, Inc., was approved by the Medical Society of the District of Columbia, the National Homeopathic Hospital could not make any contract or enter into any agreement with it.

Very truly yours, J. B. Gregg Custis, M.D., Executive Officer, Board of Trustees."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of Special Meeting of the District Medical Society, November 11, 1937 (Excerpt)

Dr. Thomas E. Neill, President, Presiding.

Present: Drs. Gannon, Warner, Mallory, John Reed, Sterling Ruffin, Schreiber, Cajigas, Cake, Mundell, Cummings, Thomas A. Groover, Marbury, Reichelderfer, Wall, Lecch, Smith, Parker, Hyde, Thomas, and other members to the number of about 300.

Dr. Neill announced that the meeting was called to hear a report from the committee of two which was sent to Chicago to confer with representatives of the American Medical Association regarding the problem confronting the

local profession, viz., the Group Health Association, Inc. He called on Dr. R. Arthur Hooe.

Dr. R. Arthur Hooe said he would make his remarks as brief as possible during which he would deal more or less in generalities. His remarks would be followed by a report from Dr. F. X. McGovern. Dr. Hooe stated: 'You would naturally want to know something of the trip which we made to Chicago. We arrived in Chicago on Saturday morning at 9 o'clock. About 5 minutes before 10 we arrived at the American Medical Association headquarters on North Dearborn Street, where we received a very, very cordial welcome at the hands of Drs. Olin West, W. C. Woodward and R. G. Leland. Our conference very promptly began at 10 a. m. and lasted for three hours, at the end of which the other two gentlemen seemed to be in a hurry—Dr. Woodward in some hurry to catch the afternoon train for Washington, Dr. Leland being in a hurry—Dr. West took us in charge to the University Club where he lunched us. We had a delightful visit with them. At the conclusion of the luncheon a taxi was furnished to take me to the Pennsylvania Station and a taxi furnished to take Dr. McGovern to the New York Central from which he left for New York.

Early in the conference it was quite apparent, very promptly developed, that we were dealing with a problem in common, in which the American Medical Association and we were the victims—we of the states, particularly we of Washington, and perhaps no less those of Denver, Colorado. This being true, the conference throughout was entirely advisory in character, in no way whatsoever controversial. We were early assured by these gentlemen that not only do they view but they have always viewed it as a National problem. They furthermore assured us that they heartily endorsed the attitude of the Medical Society of the District of Columbia and hoped and expected to endorse its future policies in regard to this matter, assuming, of course, that that course will be wisely and carefully mapped out. They recognized the fact that the Medical Society of the District of Columbia constituted the guinea-pig inoculation in this case. We have their sympathy and we have their assurance of their cooperation whenever and wherever possible. Discussing ways and means and the best ways and means by which the problem can be approached, they themselves have recognized the seriousness of this thing. They feel long before we did and they have been very diligent in their

efforts to combat it. Many things have been done by these gentlemen which have never been brought to our attention and as in all organizations—in our own many times, obviously confidential. Be assured that they have left no stone unturned nor will they in the future. They gave us very sincere advice in the matter and you will later have the pleasure of being addressed by Dr. Woodward and I hope Dr. Woodward and Dr. McGovern may cover anything I may inadvertently omit. They feel the Medical Society of the District of Columbia, if possible, at this time should not play the role of the complainant in the case, if that can be avoided. They feel, however, that unless some other profession, such as the District Bar Association—and we are advised that that is being attacked as well, or some other institution or individual, will not complain that we then, in that case, they advised that after reasonable time and with most careful legal guidance that we proceed if no one else will and show the Corporation Counsel and the District Attorney wherein this practice is illegal according to the Medical Practice Act and the Insurance Laws and if they refuse to act, complain to the Commissioners.

They feel also, I believe, it is our conclusion—it is our feeling, that they feel from what they said to us, the many things that were read—that the best way to attack this problem is through the powers that be, the powers higher up. They realize that we have no suffrage in Washington and they realize that it constitutes a great problem because of that fact. They feel that the Senators and Congressmen, as we do, should be approached by the voters back home. We, who have no vote, may have little say—receive promises and little action.

On the 18th of this month the Board of Trustees of the American Medical Association will meet in Chicago, at which time we have assurance that this issue will be the one foremost to be considered by that group. We feel also that the expression of these three gentlemen to us is but a reflection of what that committee, that Board of Trustees, will do or suggest. It is known to them that two of our members, namely, Drs. C. B. Conklin and W. M. Yater, will be in Chicago upon that occasion. They look forward to their coming. The floor will be free to them and it is hoped by them and by us that these gentlemen will speak as freely as we tried to do. It is also hoped that these gentlemen

will be able to bring us back or we will soon obtain some report as to those deliberations and their decision.

I have stressed or have tried to stress the fact, ladies and gentlemen, that we feel they feel that we could accomplish more if by some means we can reach through the proper channel the powers that be on capitol hill. There were many things said about it and it constitutes quite a problem. They are hoping that the Medical Society, as said before, will proceed after due careful deliberation, proceed wisely, in the matter, and they hope that it will be able to accomplish something along these lines.

They have stressed the fact that whatever plan may be arrived at by you, by which to accomplish this or to make the effort, the average doctor who is asked to contact a representative or senator should be coached carefully. In order that he may have well in mind the subject matter of that interview in order that he may be prepared to debate it with that gentleman and throw light upon it, at least that gentleman has to have a way of doing some things, taking him over, it is a very very important point.

In conclusion, I personally hope that by some means the Medical Society of the District of Columbia will find some way by which its members may be coached and may be able to contact as many of these men in Washington as possible for the good that may come of it. But more important than that, it would seem that the State Societies should be contacted as early as possible and those men reached through the states if it is possible to do that. Finally, in that same connection, it seems to me, as we all sit here and discuss our problems, and often never seem to get anywhere, I wondered myself if that cannot best be done by the means of some committee by its subcommittees to get together and iron out the problems.

I will now retire and hear Dr. McGovern tell more specifically of the conference, at the close of which I will close with a few words; if not, we will then have the pleasure of hearing Dr. Woodward."

Dr. F. X. McGovern was recognized. He said that in view of the fact that there may be some members present who were not in attendance at the last business meeting, he would read, for their information, the resolutions which were adopted, authorizing the sending to Chicago of two



members of the Society, and another resolution that had directly to do with the American Medical Association.

. . . . .

Dr. McGovern said he would read some questions and answers that were involved in the conference in Chicago, in order that the membership may be apprised of the proper reactions, thereby being able to deduce their own conclusions. (Questions and answers read by Dr. McGovern appended hereto.)

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The questions and answers read by Dr. McGovern are appended thereto. And of course I will omit those. They have already been read by my colleague.

(Reading:) "Dr. Woodward"——

Mr. Leahy. Wasn't there one you omitted there? You omitted the questions and answers, but there was one you omitted: "Dr. McGovern then read a statement of his own personal conclusions"?

Mr. Lewin. I will read that.

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"Dr. McGovern then read a statement of his own personal conclusions. He emphasized the fact that the American Medical Association is very definitely and strongly of the opinion that the Group Health Association, Inc.——

. . . . .

Dr. W. C. Woodward, in addressing the Society, said he felt very much at home in this Society, although he noted a lot of new faces. He said that Drs. Hooe and McGovern had stated the situation very clearly in so far as it relates to the American Medical Association. He stated that the problem is not a local problem. According to the articles of incorporation of the Group Health Association membership in the organization is not limited to members of the Home Owners' Loan Corporation and its affiliates, and is not limited to employees of the Federal Government in the District of Columbia. Every employee of the Federal Government, anywhere, except commissioned officers of the Army and Navy, and enlisted men in the

Army and Navy are eligible for the benefits of the organization, such as they are. The fact that at the present time the activities of the organization are limited to the District of Columbia is the result, he thought, of the failure of the organization to enroll enough men outside or to procure enough money to carry on outside of the Home Owners' Loan Corporation in order to put the program over. He stated that we all recognize it as a national organization and that at the present time it is centered in the District of Columbia. He felt there was one thing that the members of the Medical Society ought to bear in mind and that is that the organization that they have to fight is not the Home Owners' Loan Corporation—it is Group Health Association, Inc., which is merely a private corporation. If the five men who have organized Group Health Association have the right to organize and hire doctors and to sell the services of those doctors, whether for profit or not, any five men or women in the District of Columbia can do the same thing, retaining all the time control over the activities of the employees. He hoped the members realized that that is an intolerable situation. The courts have so regarded it—it has been held that a corporation cannot practice medicine even though every employee of the corporation is a licensed practitioner.

Dr. Woodward said the question has arisen with respect to practice of corporations. He cited one case in which an individual undertook to hire a doctor, the individual pocketing the profits. The court in that particular case ruled that unless the individual financial backer was a licensed practitioner he could not practice medicine in that way. The number of decision to the contrary have been negligible. He recalled two decisions by the Supreme Court of one state in what amounted to the same case to the contrary—Nebraska. Decisions everywhere else have held that a corporation cannot practice medicine as the Group Health Association is practicing medicine. If they do it is a criminal offense. Anybody can prefer charges if they are willing to swear out a warrant. Any organization, such as the Society, hires its own prosecutor. It pays the man to proceed for them. It swears him in. Today, Dr. Woodward added, the Society has as its servants the United States District Attorney for the District of Columbia and the Corporation Counsel for the District of Columbia. If

the Society lays before them the evidence that these persons are violating the law they have no lawful option but to prosecute. That, of course, relates to the practice of medicine. As he recalled the Healing Arts Practice Act he believed it was the duty of the Superintendent of Police to get evidence with view to prosecution.

Dr. Woodward said there was another approach to this question—that the organization is conducting an insurance business unlawfully, and in that case it is the business of the insurance commissioners to gather the information and prosecute. In both cases, both as to the unlawful practice of medicine by a corporation and with respect to the corporation engaged in insurance business, Dr. Woodward said these questions had come before the corporation counsel and he has decided in the case of insurance that such a corporation cannot engage in that business and he has come to practically the same conclusion when it comes to the practice of medicine. The United States District Attorney has ruled that a corporation cannot practice any profession that requires a license to permit one lawfully to engage in such practice. Dr. Woodward stated that those approaches are open. Other approaches that are not nearly so open are available, i. e., quo warranto proceedings, which are a bit more difficult because the authority of some officer in the District of Columbia who corresponds to the Attorney General of the state must be obtained to institute proceedings. Further, to recover from the Group Health Association money that has been granted it by the Federal Home Loan Bank Board—if that money has been unlawfully paid—a suit to recover must be at the instance of some government official.

When it comes to the check-off system, Dr. Woodward stated, which again is contrary to public policy, while not a penal offense, any effort to continue would be something that would require action by some government officer, not by a private official. He said that it has been frankly admitted that the Federal Home Loan Bank Board has granted, or committed itself by giving this organization \$20,000 a year for two years. That, he said, is 'your money and mine.' If the Board can give to a private corporation of this character he thought we could look for some authority for the gift. It is alleged that there has been undue amount of sickness among employees of the Home Owners' Loan Cor-

poration and that this grant is to reduce the amount of sickness, but if there is any undue amount of sickness no evidence has been furnished. Certainly men in the organization, many of them, are able to pay and they should not find it necessary to grant \$20,000 a year to operate a corporation. These men, earning from \$4,000 to \$8,000 a year are enabled to get from this organization medical services at \$2.20 for a single person, \$3.30 for man and his family. It should be recognized that these services could not be granted without a subsidy. It is admitted that the organization has been granted \$20,000; how much more no one knows, Dr. Woodward said. He added that it had been stated to be \$100,000. No one can say that is true or not true, but he had never seen it denied.

Dr. Woodward said further that the contract that was made between the Home Owners' Loan Corporation and the Group Health Association is a profound secret. 'One way to subsidize and operate a corporation is to hire it to render certain services. What those services are no one knows. I was told that the medical director of the Group Health Association was to be made superintendent of what he termed the Emergency Rooms of the Home Owners' Loan Corporation throughout the entire United States. There are in those offices, emergency rooms, retiring rooms that have nurses and they are to take their orders from the medical director of the private corporation. What corporation was not stated. The contract is still a profound secret and very definite and positive efforts have been made by men of influence to obtain a copy. No one has been able to see it.'

Dr. Woodward, continuing, stated that the Society has before it what is clearly a legal problem. A group of men such as the Society, not familiar with methods of law, is hardly in a position to handle the problem itself. He was of the opinion that it would wear them out. He felt that the Society must have competent counsel that will guide the matter for it; counsel in which the Society has confidence, in order that the members may go about their practice confident that their interests are being taken care of. He said Mr. Fenning could advise the Society with respect to counsel. He felt it was important that the best legal counsel be obtained. He added that the American Medical Association would cooperate in every way.

In conclusion, Dr. Woodward said that the plan outlined of laying the evidence before the Corporation Counsel and District Attorney, showing them it is their duty to act, to counsel them to act and if they will not act, appeal to Congress, is the only course. 'My own judgment is that with the law as clear as it is you will have no difficulty in having proceedings instituted for the unlawful practice of medicine by a corporation, and engaged in the business of insurance without having properly qualified.'

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, was recognized. He submitted the following report, pursuant to resolution which was adopted by the Society on the evening of November 3:

'In view of the Resolution adopted by the Medical Society of the District of Columbia on the evening of November 3, 1937, the Hospital Committee held a meeting, at my office, on the evening of November 9, 1937, and recommends that the Medical Society of the District of Columbia send the following resolution to the Medical Boards of the various local hospitals for interpretation to the Boards of Directors of those hospitals:

That the hospitals accept patients from Group Health Association, Inc., provided that Group Health Association, Inc., is responsible for their financial obligations;

That these patients only be treated by the attending, associate, assistant and courtesy staff physicians of the respective local hospitals.

J. Ogle Warfield, Jr., Chairman, Hospital Committee.

Motion was made and seconded that the recommendation contained in the report of the Hospital Committee be adopted.

Dr. Worth B. Daniels, in the discussion, said he was of the opinion that members of the local medical staffs of hospitals were required to be members of the Medical Society of the District of Columbia. He would inquire if any members of the staff of Group Health Association were now members of the Society.

The Chair stated that two members on the staff of Group Health Association at the present time are members and



they have tendered their resignation from the Society. Another member of the staff had applied for membership in the Society but withdrew his application. The two aforementioned members are still members of the Society and are on the courtesy staff of hospitals at the present time.

Dr. Yater was of the opinion that the hospitals should be contacted and assurance should be given that no member would be allowed to practice there if he is a member of the staff of Group Health Association.

Dr. E. J. Gunning would inquire how many members are on the courtesy staff of the various hospitals.

Dr. Yater made a motion to the effect that the recommendation of the Hospital Committee be recommitted to the committee on the grounds that there seems to be no assurance that members of the staff of Group Health Association are not already and might not become members of the staffs of the local hospitals. Seconded and finally adopted.

Discussion was participated in by Drs. John H. Trinder, H. S. Berton, Claude Moore, Charles P. Cake, E. M. Pickford, John D. Thomas.

Dr. Thomas E. Mattingly called attention to the fact that each member of the Society had been supplied with a reprint from the October 2, 1937, issue of the Journal of the A. M. A., outlining in detail the situation concerning Group Health Association. He said he thought all the members had to do was to read this reprint to get all the information needed.

Mr. Leahy: Now, would you read the bottom of page 11?

Mr. Lewin: Yes. Dr. Woodward or Dr. Willson?

Mr. Leahy: Dr. Woodward.

Mr. Lewin (reading):

Dr. W. C. Woodward was called upon. He pointed out that the Society voted to employ counsel to look after the interests of the Society. He advised strongly that no further steps be taken until the Society has the advice of that counsel. He felt sure Mr. Fenning would agree with him when he expresses the opinion that it is not desirable to try a case in the newspaper. He said the Society should be guided by the wishes of counsel even if the resolutions are delayed.

Mr. Leahy: Was there something—

Mr. Richardson: Yes. On the preceding page will you read the part about Dr. Willson?

Mr. Lewin: All right (reading):

“Dr. Prentiss Willson was recognized. He pointed out that the Community Chest is now campaigning for funds for the various hospitals, and institutions for the year 1938. He thought the occasion was right for a formal and very carefully thought out statement to be published in the press. He called attention to the fact that there is undoubtedly a concerted movement in the Agriculture Department and by other employees of the government interested in this insurance plan to hold a club over the Community Chest in its present drive, to the extent that they will not contribute to the Chest unless the hospitals agree to admit patients from the Group Health Association for treatment. In some ways that would seem to be a very serious situation. He thought that possibly a committee could be appointed to draft a statement for publication. He did not think it was necessary to insert it in the press as a paid advertisement; if it was he thought it would be well worth the money involved.

The Chair said he had been contacted by several members in the different departments of the government, also.”

Mr. Lewin: Anything further?

Mr. Richardson: Follow that on through.

Mr. Lewin: All right (reading):

“Dr. R. Arthur Hooe would call attention to remarks made earlier in the evening—that if possible the Medical Society should not appear as complainant. He wondered if it might not be unwise for the Society as such to proceed in this manner.

Dr. Willson was asked to put his remarks in the form of a motion so that the Society could act upon them.

Dr. Willson said he jotted down some notes in the last few minutes; after observing from the remarks of the delegates, that it was strongly suggested that this Society should make a statement. He felt the attitude of the Society had not been carefully put before the public. He made the following motion:

That a committee be appointed to draft a statement for publication by the Medical Society covering the following points:

1. That the Society is not opposed to any proper method for increasing the amount, bettering the quality or lessening the cost of medical and hospital care for persons in the lower-income groups.

2. It is opposed, however, to schemes of doubtful legality that, while making no provision for adequate care for the indigent, are able to offer their benefits to those amply able to pay proper fees for the same only because the less privileged are made to carry their share of the cost through the discredited tontine system of insurance.

3. It is also unequivocally opposed to any scheme denying the patient the right to the services of the physician of his choice.

4. With respect to the reported activity of some who are interested in a local scheme of medical and hospital insurance in attempting to coerce the Community Chest by threatening to withhold contributions to it unless the hospital beneficiaries of the Chest open their doors to the patients of physicians employed by it, who attempt to practice with dubious ethical and legal status, the Medical Society points out that the sum contributed annually by the local profession in services to the indigent, even when valued at the most minimum fees, amounts to more than the annual monetary contribution of all other charitably disposed persons in the community, a contribution, however, to which they also give their proportionate share in cash.

5. The Society is willing that this record be contrasted by the public with that of Group Health Association, Inc., in attempting to jeopardize the Community Chest Drive to attain its own objectives.

6. It asks that the public withhold judgment until such time as its present investigations, undertaken before Group Health Association, Inc., was even contemplated, may reach a point where it feels justified in offering its own solution of these problems, of which it is acutely aware, for the consideration of the public.

Dr. Willson made a motion that the foregoing motion be referred to the Committee on Public Information for consideration in relation with the Public Relations Counsel. Seconded.

Dr. Willson withdrew his motion and resolutions."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Meeting of the District Medical Society November 17, 1937 (Excerpt).

Dr. Thomas E. Neill, President, presiding.

Present: Drs. A. L. Stavelly, John B. Nichols, Frank Leech, Lyle M. Mason, John Minor, R. Lomax Wells, Thomas E. Mattingly, A. P. Tibbets, H. R. Schreiber, A. B. Bennett, Thomas A. Groover, James T. Wolfe, William C. Gwynn, James G. Gunning, Charles S. White, Tomas Cajigas, C. N. Chipman, R. X. McGovern, Joseph Horgan, Virgil B. Jackson, W. M. Sprigg, and other members to the number of about 150.

The Chair announced that he appointed the following attorneys to consult with the Society's Attorney, in accordance with resolution adopted at the meeting of the Society on November 11, pertaining to Group Health Association, Inc.: George P. Hoover, William E. Leahy."

The following exhibits were read to jury:

Gov. Ex. 65 is a copy of a letter from M. Scandiffio to Dr. C. B. Conklin, dated October 29, 1931:

"DEAR DOCTOR:

I hereby tender my resignation as a member of the Medical Society of the District of Columbia.

This is to take place immediately.

Very truly yours, (Signed) M. Scandiffio.

Letter received in the Society's Office on October 30, 1937."

Gov. Ex. 41 is a letter from Allen E. Lee to Dr. C. B. Conklin, dated October 30, 1937:

"DEAR DOCTOR CONKLIN:

I hereby submit and tender my resignation as a member of the medical society, to take effect at once.

Respectfully, Allen E. Lee."

Gov. Ex. 39 is a letter from the defendant Hooe to Dr. Allen E. Lee, dated November 2, 1937:

"DEAR DOCTOR LEE:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee, which

will be in session on Thursday evening, November 4, 1937, at 8 P. M., in the Medical Society Building, 1718 M Street, N. W.

Very truly yours, R. Arthur Hooe."

Mr. Kelleher: Gov. Ex. 62 is a letter from defendant Hooe to Dr. Mario Scandiffio, identical with Gov. Ex. 39. I believe it is understood that I may state that on November 4, 1937, Dr. Lee replied to Dr. Hooe's letter stating that he had already resigned from the Society.

Gov. Ex. 43 is a letter from Allen E. Lee to Dr. Thomas E. Neill, President, District Medical Society, dated November 11, 1937:

"MY DEAR DOCTOR NEILL:

On October 30th, 1937, I tendered my resignation as a member of the District Medical Society. I did so with considerable reluctance and only because of my desire to maintain my professional dignity since I had received, from unofficial sources, information which led me to believe that unfavorable action would be taken against me by the Society because of my affiliation with the Group Health Association, Inc.

My acceptance of the opportunity to identify myself with this organization was made only after the most careful consideration on my part.

I have been reliably informed that no action has been taken on my resignation. Relying upon the broadminded and well considered judgment of the officers and members of the District Medical Society, I now wish to withdraw my resignation and trust that my membership in the Society will be continued.

With very sincere regards, I am,

Yours very truly, Allen E. Lee, M. D."

Gov. Ex. 64 is a letter from Scandiffio to Dr. Neill, dated Nov. 11, 1937, and is identical with Gov. Ex. 43.

Gov. Ex. 42 is a letter from Dr. Neill to Dr. Allan E. Lee, dated November 18, 1937:

"DEAR DOCTOR LEE:

I acknowledge your letter of November 11th, in which you state you desire to withdraw your resignation, tendered



by you on October 30, 1937, as a member of the District of Columbia Medical Society.

Inasmuch as your resignation has not been acted upon by the Society, I am returning it to you. In doing so I wish you to understand that my action in returning the resignation to you, unacted upon, is in no wise to be considered as passing upon the motives which actuated you in tendering your resignation, as stated by you, or its withdrawal or your continuance as a member of the Society.

Very truly yours, Thomas E. Neill."

Gov. Ex. 63 is a letter from Neill to Scandiffio dated Nov. 18, 1937, and is identical with Gov. Ex. 42.

Gov. Ex. 44 is a letter from the defendant Hooe to the Executive Committee of the District Medical Society, dated November 22, 1937, in which the following letter, dated November 10 to Drs. Lee and Scandiffio, was quoted, the letter continues as follows:

"Under date of November 2, 1937, and by registered mail, you were directed to appear before the Compensation, Contract and Industrial Medicine Committee of the Medical Society of the District of Columbia, Medical Society Building, 1718 M Street, N. W., at 8 P. M., November 4, 1937. You failed to appear. The committee now, therefore, charges you of having violated Chapter IX, Article III, Sections 1 and 2 of the Constitution of the Society; reading as follows:

'1. It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession.

No member of the Society shall enter into a written, verbal, or implied contract or agreement of employment with any person, firm, corporation, association, club, lodge, or other similar organization, including the Federal and/or District Government, the terms of which contract or agreement are in violation of the principles herein expressed. The customary professional relationship of a physician to his patients, upon the basis of individual fees for services rendered, shall not be regarded as a contract within the meaning of this section.

2. Every member of the Society before entering into a contract or agreement for rendering professional services shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the committee disapproves the contract, a member may appeal to the Executive Committee.'

And again, Chapter IX, Article IV, Section 5, of the Constitution of the Society, reading as follows:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.'

. . . . .

Should you desire to defend in this matter and will so advise within 10 days, a hearing by the Committee will be arranged.

Very truly yours, R. Arthur Hooe, M. D., Chairman,  
C. C. & I. M. Committee."

Gov. Ex. 56 is Dr. Allan E. Lee's reply to Dr. R. Arthur Hooe, dated November 19, 1937:

"DEAR DOCTOR HOOE:

In response to your letter of the 10th instant, wherein I have been charged by your Committee with having violated the provisions of Sections 1 and 2 of Article III of Chapter IX and Section 5 of Article IV of Chapter IX of the Constitution of the Society, you are advised as follows:

1. Your letter or notice of November 4, 1937, was disregarded because of the fact that, prior to that date, I had sent to the Society my resignation from membership; consequently I considered further response unnecessary.

2. Since that time, however, I have withdrawn my said resignation, and, considering myself in good standing in the Society, I have intended and do intend to comply fully with the rules of the body. No formal contract has been entered into with the Group Health Association, but when the terms

of the contract are finally agreed upon and reduced to writing, I fully intend to submit same for approval under the rules of Medical Society.

While it is not my thought that I have, either in letter or spirit, violated any of the rules of the Society, and believing that charges thereof are premature, I hereby request a full and complete hearing, in accordance with your letter of November 10th, on the charges made, to the end that I may have ample opportunity, in person and by counsel, to defend against all charges so made. It is my request that said hearing be fixed at a date not earlier than fifteen (15) days hence in order that ample opportunity may be had for a full and complete presentation of the matter.

Respectfully, Allen E. Lee, M. D."

Gov. Ex. 67 is a letter from Dr. Scandiffio to Dr. Hooe, and is identical with Gov. Ex. 56, and dated November 19, 1937.

Gov. Ex. 55 is defendant Hooe's reply to the letter of Dr. Allan E. Lee, Gov. Ex. 56, and is dated November 22, 1937:

"DEAR DR. LEE:

In acknowledgment of your letter of November 19, 1937, may I say that a report, in the entire matter, is being forwarded to the Executive Committee. Further reply to your communication will doubtless follow within a few days from the chairman of that body.

Very truly yours, R. Arthur Hooe, M.D., Chairman,  
C. C. & I. M. Committee."

Gov. Ex. 68 is a letter from Dr. Hooe to Dr. Scandiffio, in reply to Dr. Scandiffio's letter of November 19, 1937, and is identical to Gov. Ex. 55.

Gov. Ex. 44, a letter from Dr. Hooe to the Executive Committee of the Medical Society, dated November 22, 1937, was read from (last paragraph) to the jury as follows:

"After careful consideration the committee is unanimously of the opinion that these members are guilty of violation of Section 1, Article III, Chapter IX, and Section 5, Article IV, Chapter IX, of the Constitution of the Medical Society of the District of Columbia, and recommends that they be expelled.

Very truly yours, R. Arthur Hooe, Chairman, C. C. &  
I. M. Committee."

Gov. Ex. 57 is a copy of a letter from William Mercer Sprigg to Dr. Allan E. Lee, dated November 24, 1937:

"DEAR DOCTOR LEE:

In reply to your letter of November 19, 1937, requesting a time for hearing 'not earlier than 15 days after the above date,' I am informing you that December 6, 1937, at 8 P. M., is the date and hour fixed when we will expect you to appear before the Executive Committee of the Medical Society of the District of Columbia for hearing, at the Medical Society Building, 1718 M Street, N. W. You, of course, know that you are entitled to be represented by counsel.

Very truly yours,"

Gov. Ex. 69 is a letter from Dr. Sprigg to Dr. Scandiffo, dated November 24, 1937, and is identical with Gov. Ex. 57.

Gov. Ex. 58 is a letter from Allan E. Lee to R. Arthur Hooe, dated December 3, 1937:

"DEAR DR. HOOE:

Enclosed herewith is \* \* \* a written agreement to be executed hereafter by and between myself and Group Health Association, Incorporated, of Washington, D. C. The original contract has not been executed by the parties thereto.

I am forwarding a copy of said proposed contract in accordance with the constitution and by-laws of the Medical Society of the District of Columbia, to you as Chairman of the Committee on Compensation, Contract and Industrial Medicine, for the consideration and approval of said proposed contract by said Committee. Please submit the proposed contract to said Committee and notify me when the approval of said Committee thereto is had and obtained.

I am informed by the Group Health Association that it will be only too glad to submit to your Committee any information which your Committee might feel necessary in consideration of said contract, explaining the purpose, objects and accomplishments of said Association.

Very truly yours, Allan E. Lee."

Gov. Ex. 70 is a letter from Scandiffo to Dr. Hooe, dated December 3, 1937, and is identical with Gov. Ex. 58.

Gov. Ex. 37 was read from to the jury as follows:

“Minutes of the Business Meeting of the District Medical Society of December I, 1937. (Excerpt)

Dr. Daniel B. Moffett, First Vice President, presiding.

Present: Drs. Gwynn,—that's Henry Gwynn, William Gwynn, Rench, Trinder, Jacobs, Nichols, Cumming, Seekinger, Mason, Stavely, Kittredge, Geier, Gilbert, McGovern, Wells, and other members to the number of about 75.

The minutes of meetings held November 17 and 24th were read and approved.

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, stated that his committee studied the local question with advice of legal counsel, but as yet was not ready to make a final report. He submitted the following resolution as a recommendation from his committee:

RESOLVED, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local Medical Society in his immediate neighborhood and a member of the American Medical Association.

Dr. Warfield made a motion that the resolution be adopted and that a copy be sent to each of the local hospitals. Seconded and adopted.

The Secretary would inquire whether the Hospital Committee was ready to report on hospitals approved, in accordance with the Constitution of the Society.

Dr. Warfield said that the Hospital Committee realized they should report and revise the hospital list, but that all the members of the committee as well as Mr. Fenning, the Society's Legal Counsel, felt it was wise to postpone that report.”

“Minutes of the Adjourned Special Meeting of the Executive Committee of the District Medical Society, December 10, 1937.

Dr. Sprigg, Chairman, presiding.

Present: Drs. Borden, Breeding, Chipman, Fowler, Holden, Hooe, Macatee, McGovern, John Reed, Hiram Reede,



Ruffin, Schreiber, Wells, and Conklin. (By invitation: Dr. Margaret M. Nicholson.)

Announcement was made by Dr. R. Arthur Hooe, Chairman of the Compensation, Contract and Industrial Medicine Committee, that Dr. Allan E. Lee submitted his resignation on December 10, to take effect immediately, as a member of the staff of Group Health Association, Incorporated. This letter was read. Acting upon the submission of this letter the Compensation, Contract and Industrial Medicine Committee drew up the following for presentation to the Executive Committee, which was read by Dr. Margaret M. Nicholson:

December 10, 1937.

#### The Executive Committee.

On November 22nd, 1937, our committee addressed a communication to you advising you of our investigation concerning Drs. Allan E. Lee and M. Scandifio, and recommended that they be expelled as members of the Society because of their violation of Section 1, Article III, Chapter 9, and Section 5, Article IV, Chapter 9, of the Constitution of the Medical Society of the District of Columbia.

Our committee is today in receipt of a letter from Dr. Allan E. Lee, advising us that he has resigned from the staff of Group Health Association. Inasmuch as our recommendation respecting Dr. Lee was based upon the fact that he had entered into a contract with Group Health Association and that contract has now been terminated by him, we feel that no further action should be taken with respect to Dr. Lee.

We therefore, respectfully request that the charges and recommendations against Dr. Lee, embodied in our communication of November 22, 1937, be withdrawn and that appropriate action be taken by your committee thereon.

R. Arthur Hooe, Chairman.

When it was ascertained definitely that Dr. Allan E. Lee was in fact no longer a member of the Group Health Association Staff, Dr. F. X. McGovern, for the Executive, moved that all charges that had been filed by the Compensation, Contract and Industrial Medicine Committee, be dropped forthwith. This was duly seconded and adopted.

Mr. George P. Hoover, Attorney, interposed that Dr. Hooe's committee address a letter to Dr. Lee, stating in

effect that his resignation would end the prosecution in so far as his committee is concerned.

Dr. W. M. Sprigg stated that inasmuch as Dr. E. Hiram Reede had already presided at the previous meeting, he was of the opinion that Dr. Reede should continue. This arrangement was agreed to.

Dr. E. Hiram Reede, Vice Chairman, now presiding.

At this point Dr. Mario Scandiffio and the attorneys for the Group Health Association, Inc., and Mr. W. F. Pepniman, filed into the room. The stenographer retained by Mr. Hoover and the attorneys for the Society then proceeded to take down verbatim the proceedings.

(Signed) C. B. Conklin, Secretary."

Gov. Ex. 59 is a letter from Allan Lee to Dr. R. Arthur Hooe, dated December 10, 1937:

"DEAR DOCTOR HOOE:

Enclosed please find a copy of a letter of resignation from the staff of Group Health Clinic, as you requested. You will please inform the members of the committee of my course of action as you have outlined.

Sincerely, Allan Lee, M. D."

Gov. Ex. 60 is a letter from Dr. Lee to Dr. E. Brown, Medical Director, Group Health, dated December 10, 1937:

"MY DEAR DOCTOR BROWN:

Upon reconsideration of all the facts involved, I am forced to resign as a member of your staff of the clinic.

Sincerely, Allan E. Lee, M. D."

Gov. Ex. 47 is a letter from Dr. Hooe to the Executive Committee dated December 10, 1937, advising that Dr. Lee had resigned from Group Health and requesting the withdrawal of the charges against him. (This was read from the minutes, Gov. Ex. 37.)

Gov. Ex. 61 is a letter from the defendant Hooe to Dr. Allan E. Lee, dated December 21, 1937:

"DEAR DOCTOR LEE:

In acknowledgement of your letter of December 10, in which you enclose a copy of your resignation as a member of the medical staff of Group Health Association, Inc., may I say that upon receipt of same the Compensation,

Contract and Industrial Medicine Committee appeared before the Executive Committee and requested a withdrawal of its charges against you, which request was granted. Such action places your status as that of a member now in good standing.

Very truly yours,"

Gov. Ex. 120 is a copy of a letter from the defendant Olin West to Dr. Walter D. Wise, Secretary of the Medical and Chirurgical Faculty of the State of Maryland, Baltimore, Maryland, dated November 16, 1937:

"DEAR DOCTOR WISE:

While I am delighted to have your letter of November 12, I am sorry indeed that you will not be with us at the Annual Conference of Secretaries of Constituent State Medical Associations. I think that some of the matters that will be discussed at the Conference are of tremendous importance and, in some particulars, are probably more important than any other matters that have ever been considered at similar meetings.

We have done all that we could to oppose the Group Health Association, Inc., in Washington, but in spite of our best efforts the scheme has gone into operation. We have worked as closely as possible with the Medical Society of the District of Columbia. As a matter of fact, our efforts began before the Medical Society of the District of Columbia became very active. It is my purely personal opinion that it is an outrage that an agency of the Federal Government should finance a corporation that is to engage in the practice of medicine in the face of the fact that the laws of most of the states specifically declare corporate practice of medicine to be illegal.

I respectfully suggest that the Medical and Chirurgical Faculty of the State of Maryland make proper representations to the members of Congress from Maryland with respect to this matter.

With my sincere good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 158 is a letter from Dr. Poling to Dr. Olin West, Secretary of the AMA, dated November 24, 1937:

"MY DEAR DR. WEST:

The Mahoning County Medical Society received a communication relative to the Clinic in Washington, D. C.,

financed and equipped by money from the United States Government (HOLC).

Action was taken by the Council of this society at its meeting of November 22, 1937. This problem was turned over to the chairman of the Legislative Committee and Allied Professions for action. They are authorized to send resolutions to various influential men relative to this situation, asking for their cooperation. Council sent a letter of confidence to Dr. Thomas E. Neill, President of the District Medical Society.

Therefore, the Council of the Mahoning County Medical Society is hereby informing you of its action on this timely matter.

With kind regards, I remain,

Yours fraternally, R. B. Poling, Secretary."

Gov. Ex. 157 is a letter from the defendant Olin West to Dr. Poling, dated December 1, 1937:

"DEAR DOCTOR POLING:

I am greatly obliged to you for your letter of November 24 informing me of the action taken by the Mahoning County Medical Society with respect to the Group Health Association, Inc., which has recently entered into the practice of medicine in the District of Columbia.

The American Medical Association has done all that it could to oppose this movement. The Group Health Association has received a charter and is actually an incorporated body. The Home Loan Bank Board, a federal agency, has agreed to provide the sum of \$20,000 a year for two years for the purpose of financing the Group Health Association, Inc., in the face of the fact that the laws of practically all of the states of the Union specifically declare the practice of medicine by a corporation to be illegal. Membership in the Group Health Association, Inc., is open to all government employees other than those of the Army and Navy, although it is claimed in Washington that the membership is now limited to employees of the Home Owners' Loan Corporation and its affiliated agents.

I am very sure that the Medical Society of the District of Columbia will appreciate the support of the Mahoning County Medical Society in its efforts to combat the corporation practice of medicine, which in the District of Co-

lumbia threatens to have a far reaching and deleterious effect on the private practice of medicine.

With most cordial good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 159 is a letter from the defendant Olin West to Dr. Poling, Youngstown, Ohio, dated December 4, 1937:

"DEAR DOCTOR POLING:

Your letter of November 30 has just come to hand. The American Medical Association has done everything that it could do to oppose the organization and operation of the Group Health Association, Inc., in the District of Columbia. I think I am safe in saying that the American Medical Association became active in this matter before the Medical Society of the District of Columbia began its efforts in opposition.

The Group Health Association, Inc., secured a charter in the District of Columbia. The Home Loan Bank Board, which I understand is an affiliate of the Home Owners' Loan Corporation, has, according to our information, agreed to finance the Group Health Association, Inc., to the extent of \$100,000 if that sum is thought to be necessary, and has taken action whereby \$20,000 a year for two years has been set aside for the use of the Group Health Association, Inc. We have done all that we could to oppose this movement on the ground that the corporate practice of medicine is illegal and altogether undesirable, as well as because of a realization of the fact that if all government employees in the District of Columbia who are eligible for membership in the Group Health Association become members, the private practice of medicine in the City of Washington will be largely destroyed. In spite of the fact that representatives of the American Medical Association have sought and have secured the assistance of persons in high official position in Washington, we have never until this good day been able to secure copies of the contract offered by the Group Health Association, Inc., to those who become members.

Senator McCarran has demanded an investigation of this whole movement and has raised the question on the floor of the Senate concerning the right of an agency of the federal government to appropriate money for such purposes as those for which the Home Loan Bank Board has already made definite commitments.



We were informed by persons connected with the Home Owners' Loan Corporation that the Group Health Association, Inc., was organized for the benefit of employees of the HOLC and its affiliated bodies, but the fact is that under the provisions of the charter and the by-laws of this organization all employees of the federal government outside of the Army and Navy are eligible to apply for membership.

The matter is one of concern not only in the City of Washington but also in other centers in the United States where considerable numbers of government employees reside. To my mind, it is difficult to understand just how an official agency of the federal government can agree to finance an organization that is to engage in the corporate practice of medicine in the face of the fact that in practically all states practice by corporations is illegal. The Medical Society of the District of Columbia, according to my latest information, has employed counsel and is seeking to secure rulings from legally constituted officers of the federal government and of the District of Columbia as to the legality of the incorporation and the proposed activities of the Group Health Association, Inc.

With most cordial good wishes, I am,

Very truly yours, Olin West."

Gov. Ex. 161 is a copy of a letter from the defendant West to Dr. S. Adolphus Knopf, dated November 8, 1937:

"DEAR DOCTOR KNOPF:

I am greatly pleased to have your letter of November 3, to which is attached a copy of a letter addressed by you to Mr. Robert L. Hill, a charter member of the Group Health Association, Incorporated, in Washington. I am, of course, greatly pleased that you approve the official attitude of the American Medical Association toward such movements as the Group Health Association, Incorporated.

When one considers the facts with respect to the numbers of Government employees in Washington and in one or two other centers in the United States, one is compelled to wonder what will become of the private practice of medicine in those centers if the government is to subsidize cut-rate medical schemes under which corporations are to engage in the practice of medicine in spite of the fact that practice of medicine by corporations has been repeatedly declared to be illegal in one state after another. Even in the City of

Washington, at least one opinion has been submitted by a duly appointed public official clearly indicating a definite view to the effect that such decisions as have been handed down by a number of courts in various parts of the United States to the effect that practice of medicine by a corporation is illegal are in accord with the law. In so far as I know no public legal authority in Washington has definitely expressed an official opinion concerning the legality or illegality of the practice of medicine by a corporation, but I am specifically informed that the principle involved has been fully covered in a legal opinion uttered by an official of the government of the District of Columbia or an official of the federal government in Washington.

However all this may be, it is nevertheless a fact that the Group Health Association, Incorporated, has begun operations, and that under the provisions of its by-laws and of its charter, government officials who are paid such salaries as to remove them entirely from the category of the low income group are in position to receive medical service to be provided for them on a cut-rate basis by a corporation engaged in the practice of medicine and actually subsidized by an official agency of the federal government.

• • • • •  
Very truly yours, Olin West."

Gov. Ex. 195 is a copy of a letter of the defendant Woodward to Dr. G. F. Simpson, President, Medical Society of Virginia, Purcellville, Virginia, dated December 8, 1937:

"DEAR DR. SIMPSON:

I do not know whether the Medical Society of the District of Columbia has or has not requested the cooperation of the Medical Society of Virginia in the contest with Group Health Association, Inc., in which the Medical Society of the District of Columbia is now engaged. If your attention has already been called to the situation, no harm will be done by this letter. If it has not, possibly you will see your way clear to take an active part in the contest. Certainly there is every reason why you should do so, not only from the standpoint of national interest, but from the standpoint of local interest, for Group Health Association, Inc., a private lay corporation subsidized by the Home Owners Loan

Corporation or its affiliates, plans to furnish medical, hospital, and nursing service to all employees of the Home Owners Loan Corporation and its affiliates, and possibly to other employees of the Federal Government, and all 'dependents' of all such employees, who identify themselves with the Association, not only in the District of Columbia, but within ten miles of the District, and possibly even within twenty miles. Such an area will cover a very substantial space in the State of Virginia. The By-Laws of Group Health Association, Inc., provide:

'To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles.'

I am sending you a few reprints of our article on Group Health Association, Inc., that you may find interesting, if you overlooked the article when it was published in The Journal, and which may be useful in any cooperative work you may undertake.

I enclose also a clipping from The Evening Star (Washington, D. C.), November 30, 1937, indicating the interest of Senator McCarran of Nevada in the matter. It has occurred to me that possibly you might enlist the interest of your two Virginia Senators, Glass and Byrd, for certainly they are among the most able of all members of the Senate. Senator Byrd is interested, too, in government reorganization, and the maladministration indicated in connection with the activities of the Home Owners Loan Corporation in the present instance ought to arouse his interest. Senator Glass, as chairman of the Senate Committee on Appropriations, will probably be interested in the fact that the Home Owners Loan Corporation or some of its affiliates has "granted" \$40,000 of public money to this private lay corporation, organized with the approval of the Corporation and its affiliates, to enable Group Health Association to furnish medical, hospital, and nursing services, not only to employees of the Home Owners Loan Corporation and its affiliates, but to their dependents, and to employees of other branches of the Federal Government, at supposedly bargain prices. The movement represents, it seems to me, a

rank kind of unauthorized medical practice, and the fact that it is to extend into the State of Virginia should be of interest to you.

No one in the House of Representatives has as yet manifested any active interest in this matter, and possibly your Representative Woodrum, a member of the House of Representatives Committee on Appropriations might be interested. There is, of course, no reason why other members of the Virginia delegation should not be appealed to, but Representative Woodrum is in a better strategic position to inquire into the situation, without the formality of a congressional investigation, when the Committee on Appropriations of which he is a member is called on to consider the grant by the Home Owners Loan Corporation or its affiliates.

According to the Washington Post, December 4, an HOLC official undertook to justify the grant of \$40,000 of the taxpayers' money to this private corporation as follows:

'Our board of directors decided that it was legal to make a two-year \$40,000 investment in the health of our employees. We have no intention of continuing the subsidy, as the GHA is expected to become self-supporting. We look upon this investment as similar to departmental installation of air-conditioning—and there's no objection to that!'

Of course, any such attempt at justification is ridiculous.

In the first place, there is no evidence that the investment made by the HOLC in air-conditioning was not illegal. If the investment was made with funds that were not appropriated for that purpose, it clearly was illegal. More particularly, however, if the investment was made in air-conditioning the homes of employees of the HOLC and its affiliates, the operation was clearly illegal, and the present activities of the HOLC and its affiliates extend into the homes of employees within the District of Columbia and within an area of from ten to twenty miles from the boundaries of the District, for the proposal is to furnish medical, hospital, and nursing service not only to employees of the government, but also to their 'dependents'.

The attempt at justification is moreover silly, in that the present grant was made without competitive bidding and although intended, allegedly, to provide medical, hospital, and nursing services, it was made to a lay body having no special knowledge of any of such services and possessing at

the time of the grant no such services to sell. So far as I am informed, it has . . . under its contract or agreement, and of course, since the \$40,000 is to be a grant, and not a loan, it has given no security for the return of the money.

All of these matters should actively interest your senators and representatives, and you might even interest them in the competition with independent medical practices in the State of Virginia that will be set up by this federal subsidy of a lay organization to buy and sell medical services for patients in the State.

Incidentally, I should have mentioned above the fact that Senator King of Utah had announced his interest in the granting of the taxpayers' money to this private lay corporation for furnishing professional services at bargain prices to government employees and their dependents.

Yours truly, W. C. Woodward."

Gov. Ex. 196 is a copy of a letter from the defendant Woodward to Dr. Thomas E. Neill, dated December 15, 1937:

"DEAR DR. NEILL:

I have just seen a copy of the letter sent by the Chairman of the Federal Home Loan Bank Board, John H. Fahey, to Senator McCarran, under date of December 3, undertaking to justify the expenditure of money collected from the taxpayers of the United States generally for the purpose of subsidizing a lay medical and hospital service for the benefit of the children, wives, and other dependents of such employees of the United States Government, including the Chairman himself, as may identify themselves with Group Health Association, Inc. I have been wondering if any effective answer has been made to the Chairman's letter? Certainly, in view of the publicity that has been given to the letter an answer should be made and given equal or greater publicity, so that at least a reasonable number of the Senators and Representatives in Washington will see it. A devastating answer can be prepared without great difficulty.

This leads me to inquire as to just who is leading the force of the Medical Society of the District of Columbia in their fight on the federally subsidized practice of medicine and insurance by lay groups in the District of Colum-



bia and adjacent states. Incidentally, will you not let me know if a contest is or is not being waged by the medical profession of the State of Maryland and the State of Virginia against such subsidized lay practice within their respective jurisdictions—for the subsidized Group Health Association, Inc., proposes to carry on its activities anywhere in either of the states named within twenty miles of the boundaries of the District of Columbia, an area much larger than the District of Columbia itself.

Yours truly, William C. Woodward."

Gov. Ex. 197 is a letter from the defendant Neill to Defendant William C. Woodward in Chicago, dated December 16, 1937:

"MY DEAR DOCTOR WOODWARD:

I have your letter of December 15th asking who is leading the fight of the Medical Society of the District of Columbia against socialized medicine. The fight is being led by our Public Relations Counsel, Mr. Fulton Lewis, Jr., under a Steering Committee, consisting of Doctors McGovern, Yater, Schreiber and myself, ex-officio member of the committee, together with counsel for the Medical Society, and additional counsel, Mr. George Hoover and Mr. William Leahy.

We have felt all along that in the case of the HOLC there was a misappropriation of funds, and I enclose herewith the latest press news dealing with the subject.

As yet we have not been advised by the Corporation Counsel whether or not this organization is practicing medicine illegally, although the briefs have been presented to him some time ago. I feel that we will be able to break this organization entirely, but I do not feel that the fight ends there; as the socialistic tendency of the present administration is so strong that attempt may be made to pass a bill making these illegal acts legal. Maryland and Virginia, both, due to their proximity to the District of Columbia, are getting interested in this matter, and we feel that every state society in the country should be interested if we are to be the ultimate winners.

Very sincerely yours, Thomas E. Neill."

Gov. Ex. 204 is a copy of a letter from the defendant Woodward to the defendant Neill, dated December 22, 1937:

"DEAR DR. NEILL:

I thank you for your letter of December 17, relative to Group Health Association, Inc.

Frankly, I cannot conceive of any public relations counsel for a state medical society, unless he is a member of the society and well up in its ranks, leading such a fight as you have on your hands. I cannot conceive of its being the function of any public relations counsel to do so unless he is a member of the organization and high up in its rank. For a medical organization to employ a layman to lead such a fight strikes me as an anomaly.

Of course, your counsel must lead the fight in so far as involves its legal factors. Your public relations counsel may lead the fight in so far as refers to publicity and relative matters. But the whole leadership must devolve on officers and agents of the Medical Society of the District of Columbia, who in the end must be responsible to the Society even for the activities of counsel and public relations counsel.

You write that your Public Relations Counsel, Mr. Fulton Lewis, Jr., is leading the fight 'under a Steering Committee, consisting of Doctors McGovern, Yater, Schreiber and myself (yourself), ex-officio member of the committee, together with counsel for the Medical Society, and additional counsel, Mr. George Hoover and Mr. William Leahy.' Certainly, however, it seems to me that some one member of the Medical Society of the District of Columbia ought to be personally responsible for what goes on, although with the advice of a committee, of course.

You write that Maryland and Virginia are getting interested. Yes, I called the attention of the proper officers of the State medical organizations of those two jurisdictions to the situation and suggested that there was something for them to do. It seems to me, however, that it is for you to get in touch with the medical societies of the counties immediately adjacent to the District of Columbia and to get them interested. The members of those organizations have votes; the members of the Medical Society of the District of Columbia have not. Moreover the members of the medical societies in the counties immediately adjacent to the District have an active personal interest in the matter that physicians in Maryland and Virginia in more remote parts of the states have not, and

therefore your neighboring medical societies offer a better chance of arousing interest than exists through any other method of approach.

Yours truly, William C. Woodward, Director."

Gov. Ex. 37 was read from to the jury:

"Minutes of the Stated Meeting of the Medical Society of the District of Columbia, January 5, 1938. (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. Alfaro, Murray, Elward, Thompson, Vaughan, Jacobs, Hiram Reede, Leech, William Gerry Morgan, F. X. McGovern, McChesney, Reichelderfer, H. C. Macatee, Ellison, Coulter, Bernton, Pendexter, Davis, Connolly, Herbst, Chipman, Bennett, and others to the number of about 300.

The minutes of the previous meeting, held December 15, 1937, were read and approved.

Dr. R. Arthur Hooe said the forum idea sounds good and he hoped it would lead to something constructive. He felt there was one thing that the medical profession should look squarely in the face and that was that the problem was by no means a one-sided one. There has been a crying demand for years and that demand has not been met by the medical profession. He felt that two things were very important: (1) Organized medicine to stand solidly together; (2) that some time in the near future there should be appointed a committee to ask for a hearing before the various boards of directors of various civil hospitals in Washington, and that the committee should very definitely ask a decision from the boards as to what their hospitals will do in the matter.

Dr. Hooe added that it seems sure that the hospitals will stand by the Society. In regard to Dr. McGovern's suggestion for the Sunday meeting, Dr. Hooe felt that the Medical Society's Auditorium would not accommodate all those who should be invited. He wondered what would be accomplished by such a meeting, in view of that the fact that the Society has not as yet adopted any policy."

Mr. Leahy: Will you read beginning on the bottom of page 10, Mr. Lewin, please? That brings up this forum that Dr. Hooe just spoke about.

Mr. Lewin: Yes.

"The Secretary thought there might be a combination of forces in these forums. He said there might be a misunderstanding if proper publicity is not given to the Sunday meeting—it might seem as though the Society was on the defensive. He thought the public forum idea was an excellent plan. He thought there should be some way in which Drs. Christie and Yater could state the position of organized medicine in the present situation along with the advocates of full-time health people."

Mr. Lewin: More?

Mr. Leahy: Yes.

Dr. C. N. Chipman was of the opinion that the proposition involved public policy and should be referred to the Executive Committee and the membership should be notified.

Dr. William P. Herbst, Jr., stated that the Society has been on the defensive all along and should present its position to the public so it will not be on the defensive. He thought the more influential men participating in the forum, the more would be accomplished. He felt that it was time for the Society to come out from behind and just say nothing and be constantly attacked by all different sources both sincere and insincere."

Mr. Lewin: More?

Mr. Leahy: Yes.

"Dr. V. R. Alfaro called attention to the provisions for a Steering Committee and to an article which appeared in the Sunday Post, January 2, 1938, the last paragraphs of which read as follows:

"That the Society is in no mood for compromise and plans to fight Group Health Association to the end was indicated last night by one of its highest officers.

"Neither the HOLC plan nor any other prepayment plan is tolerable to the Society," he said. "People who wish to budget their medical expenses are invited to use the Medical-Dental Service Bureau, where fees are reasonably adjusted and payment can be extended over many months."

Dr. Alfaro pointed out that to his knowledge the Society had not authorized any official to commit the Society and had not gone on record either way. It is at the present time studying the matter. He felt that this type of mis-

information to the public should be investigated immediately.

Dr. Prentiss Willson made a motion that the matter of the newspaper article be referred to the Committee of Censors with instructions that an attempt be made to find out who was responsible for this statement and to take appropriate action. Seconded by Dr. R. A. Hooe. Duly Adopted.

Mr. Lewin: The rest has nothing to do with the case, do you think, Cavanagh, Public? Do you want that?

Mr. Leahy: Only that they adopt the forum idea.

Mr. Lewin: All right.

Dr. Cavanagh restated his motion:

1. That the Medical Society of the District of Columbia approve in principle the Public Health Forum of Georgetown University.

Dr. Prentiss Willson offered an amendment, duly seconded and adopted, to the effect that it be added that the Society does not commit itself to any views expressed.

2. That the subject matter for the current week's program be included in the regular announcements of the Society.

Upon motion, duly seconded, Dr. Cavanagh's motion, as amended by Dr. Willson, was duly adopted.

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the Business Meeting of the Medical Society of the District of Columbia held February 2, 1938. (Excerpt.)

Dr. Thomas E. Neill, President, Presiding.

Present: Drs. Gwynn, Mallory, Cajigas, Wall, Yater, Schoenfeld, Mattingly, Herbst, Horgan, Cake, J. Rogers Young Trinder, Alfaro, Bolton, Pickford, Mundell, Bern-ton, Nicholson, and other members to the number of about 90.

The minutes of the preceding meetings held January 5, January 12, January 19, and January 26, were read and approved.



Dr. Thomas E. Mattingly was recognized. He said that a couple of weeks ago a member of the Executive Committee made a statement that Sibley Hospital was wide open for Group Health Association, Inc. He said he wanted to say that the organized profession has not got a stauncher, firmer friend in Washington than Dr. Lewis H. Taylor, and that Dr. Taylor authorized him to say that at no time has H. O. L. Group Health Association had a patient in Sibley Hospital, known to be such. He added that not many months ago Dr. Selders made application to practice in Sibley Hospital, asking for privileges in general medicine, major and minor gynecology, major and minor obstetrics, and major and minor surgery. The gentleman's application was turned down.

Dr. Mattingly offered the following motions:

1. That the proper agency of the Medical Society be instructed to present at our next stated meeting the facts relating to the present status of Group Health physicians at the various Washington Hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Society's wishes in the premises.

2. That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington Hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges.

Upon motion by the Secretary, duly seconded, it was adopted that these motions be referred to the Executive Committee for consideration."

Mr. Lewin: And the minutes are signed—

Mr. Leahy (interposing): Well, just read on.

Mr. Richardson: Continue.

Mr. Lewin: Read on.

"Dr. R. Arthur Hooe would inquire of Dr. Mattingly whether his name was mentioned in regard to the alleged statement concerning Sibley Hospital.

Dr. Mattingly answered that it was Dr. Hooe, and the statement was that Sibley Hospital was wide open to Group Health Association, Inc.

Dr. Hooe said he wished to assure Dr. Mattingly that there never was such a statement made by him nor any other member of the Executive Committee. 'At the last meeting of the Executive Committee, as a note of warning, I called the committee's attention to the fact that I had been told in my office but a few days before that Sibley Hospital was admitting one, the surgeon of H. O. L. C. That is a vastly different statement from the aspersion that Sibley Hospital is wide open to H. O. L. C. doctors. My statement was that I had been informed that one of them was being admitted to practice in Sibley Hospital.' Dr. Hooe, therefore asked Dr. Mattingly to convey the message to Dr. Taylor.

Dr. Mattingly apologized and stated that in all probability he was guilty of a misquotation.

Dr. Hooe said in that event his message to Dr. Taylor was not necessary.

C. B. Conklin, Secretary."

Mr. Leahy: Well, would you read on page 8, please, what the counsel for H. O. L. C. is doing with regard to briefs, beginning on, I think it is, paragraph 8?

Mr. Lewin: Page 8?

Mr. Leahy: Yes.

Mr. Lewin: Yes.

Mr. Leahy: The paragraph 8 there.

Mr. Lewin: Oh, yes.

A memorandum of telephone conversation held between the offices of Mr. George Hoover and the President of the Society, relative to the present status of Group Health Association, Inc.:

"February 2, 1938.

Mr. George Hoover phoned me this morning to acquaint me with the facts of what is going on in the Legal Department in regard to the H. O. L. C.

Mr. Fenning, Mr. Hoover and Mr. Leahy have had consultations and Mr. Fenning had an interview with Mr. Underwood, of the District Attorney's office, and the attorney for the H. O. L. C. had filed a brief which Mr. Hoover and Mr. Leahy thought did not present all the facts and therefore was not the proper brief to present to the judges.

After Mr. Fenning went away Mr. Hoover has been in

tough with Mr. Underwood and as the matter now stands the attorney for the H. O. L. C. has been given until February 16 to comply with the request that they file a brief which is acceptable to all attorneys concerned as the previous one had omitted some very important items. Should the attorney for the H. O. L. C. not comply with this request, Mr. Hoover feels that we should file injunction proceedings as the next step. This requires the names of four members of the Medical Society practicing medicine in the District of Columbia as individuals. I have talked with four gentlemen who are willing to have the Society use their names, Joseph S. Wall, Loren B. T. Johnson, J. W. Burke, and Sterling Ruffin.

(Memorandum submitted by the president, Dr. Neill.)"

Gov. Ex. 48 is a copy of a letter from the defendant Conklin to the defendant Hooe, chairman, Compensation, Contract and Industrial Medicine Committee, Medical Society of the District of Columbia, Washington, D. C.; dated February 25, 1938:

"DEAR DR. HOOE:

Pursuant to action of the Executive Committee in session on the evening of February 21, 1938, the enclosed resolution submitted to the Society on February 2, 1938, is referred to your committee.

Very truly yours, C. B. Conklin."

The enclosed resolution was read to the jury as follows:

"That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges."

Gov. Ex. 37 was read from to the jury:

"Minutes of the Executive Committee of the Medical Society of the District of Columbia, February 21, 1938, (excerpt):

Defendant Sprigg, chairman, presiding:

Present: Drs. Borden, Claud, Gr... Holden, Hooe, McGovern, Neill, John Reed, Hiram Reede, C. B. Conklin, Mr. Charles S. Baker, Acting Counsel, by invitation.

The minutes of the Executive Session of the committee, held December 10, and meetings of December 27 and January 24 were read and approved.

The matter of Dr. Mario Scandiffo's trial and the proper action that should be taken at this time by the Executive Committee was now up for discussion.

Dr. R. Arthur Hooe emphasized that in his conversation with Mr. George P. Hoover that there were no legal aspects to the trial and that there were no repercussions that might take place should the Society take action previous to the obtaining of a declaratory judgment which was now before the courts. The court would not be influenced at all.

Upon motion, duly seconded, it was found, upon ballot, that Dr. Scandiffo was guilty as charged. Seven ballots were in the affirmative; two members not voting.

Dr. Hooe, at this point, said that Dr. Sterling Ruffin was unable to be present but it was his opinion that Dr. Scandiffo should be expelled from the Society:

Upon further motion it was recommended to the Society that Dr. Mario Scandiffo be expelled (Report, finding and recommendation appended).

## THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

### In the Matter of Mario Scandiffo, M.D.

Whereas, the Compensation, Contract and Industrial Medicine Committee, by its Chairman, R. Arthur Hooe, M.D., under date of November 22, 1937, did submit in writing to the Executive Committee charges against Mario Scandiffo, M.D., a member of the Medical Society of the District of Columbia specifically charging him with having violated Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society.

And whereas, after due notice to the said Mario Scandiffo, M.D., the Executive Committee did hold hearings at which the said Mario Scandiffo, M.D., with his counsel, did appear, did testify in his own behalf, did produce witnesses in his defense, and was accorded full and fair hearing in response to said charges; the said charges were fully and impartially investigated and at the conclusion of the said

hearings, arguments, both oral and written, were submitted by counsel for said Mario Scandifio, M.D.

Thereafter, all of the evidence adduced at the said hearings was duly considered by the Executive Committee, and upon consideration thereof, the said Executive Committee, by more than a two-thirds vote, finds the said Mario Scandifio, M.D., guilty of violating Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Medical Society of the District of Columbia, as charged by the Compensation Contract and Industrial Medicine Committee, and recommends that he be expelled from said Society.

And it is further ordered, that the report, findings and recommendation of the Executive Committee be submitted in writing to the Medical Society of the District of Columbia at its next regular business meeting for such action as may be deemed proper pursuant to its Constitution.

William Mercer Sprigg.

Relative to certain resolutions that had been prepared by Dr. Thomas E. Mattingly at the meeting of the Society, held February 2, 1938, it was, upon motion, adopted that resolution (a) be referred to the Hospital Committee for consideration and early report, and resolution (b) be referred to the Compensation, Contract and Industrial Medicine Committee.

At this point Dr. R. Arthur Hooe addressed the meeting, stating that he was in a dilemma as to how to proceed. His telephone rang frequently, telling him of alleged work that had been done by various members of the Society for Group Health Association, Inc.

Dr. Thomas E. Neill turned over to Dr. Hooe a written statement at this time which would tend to show that two members of the Society were guilty of working for the Group Health Association. This statement had come from Dr. M. F. Kennedy and the information was based upon prescriptions for glasses that had reached Teunis, Opticians.

The Secretary also spoke of a letter from Dr. W. C. Woodward which he had allowed Dr. F. X. McGovern to read, in which Dr. Woodward's interest was expressed in resolutions that had been prepared by the Secretary, decrying



the attitude as expressed in an editorial of the New England Journal of Medicine at January 20, 1938.

The Secretary was instructed to furnish Dr. McGovern and his Committee on Public Relations with copy of Dr. Woodward's letter, so that his committee could take the proper action relative to the Secretary's resolutions.

C. B. Conklin, Secretary."

Gov. Ex. 83 is a letter from C. B. Conklin, Secretary of the District Medical Society, to Dr. J. Ogle Warfield, Jr., chairman of the Hospital Committee of the District Medical Society, dated February 25, 1938.

"DEAR DR. WARFIELD:

Pursuant to action of the Executive Committee, in session on the evening of February 21, 1938, the enclosed resolution, which was presented to the Society at the Business Meeting in February, was ordered referred to the Hospital Committee for consideration and report.

Very truly yours, C. B. Conklin, M.D."

The enclosed resolution is as follows:

"That the proper agency of the Medical Society be instructed to present at our next stated meeting the facts relating to the present status of Group Health physicians at the various Washington hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Society's wishes in the premises."

The Government requested a ruling on Gov. Exs. 312, 314, 315, 316, 317, 318, 319, 320, and 321. The objections of the defendants to these documents that they were incompetent, irrelevant, immaterial and inadmissible, as no conspiracy had been proven, were hearsay and were not properly identified and proven, were overruled and exception noted.

Gov. Exs. 312, 314 to 321, inc., were received in evidence.

Gov. Ex. 313, without the handwritten notation on the bottom thereof, was offered in evidence. Defendants objected on the grounds that it was incompetent, irrelevant, immaterial, that it was only a rough draft and was not the final resolution submitted by the writer, that no conspiracy had been proven, that it was hearsay and had been not

properly proven. These objections were overruled and exception noted.

Gov. Ex. 313 was received in evidence.

Gov. Ex. 324 was received in evidence against Dr. Warfield only.

The Government then requested a ruling on Gov. Exs. 295b to and including 311. The defendants objected on the ground that the documents were incompetent, irrelevant, immaterial, were hearsay, no conspiracy had been proven, were improperly proven and were not shown to have been authorized by any of the Washington hospitals which are corporations and that the proof was insufficient to show a conspiracy involving the Washington hospitals. These objections were overruled and exception noted.

Gov. Exs. 295b to 311, inc., were received in evidence, i. e., the typewritten questions of each of these exhibits.

Gov. Exs. 296, 297, 305, 306 and 311 were received in evidence in full.

WILLIAM F. PENNIMAN (Recalled).

Direct examination.

By Mr. Lewin:

I saw Dr. Allan E. Lee on December 10, 1937, in my office in the HOLC.

After receiving a letter from Dr. Custis, I talked to Col. Randall, President of the Homeopathic Hospital. This was after the clinic had opened.

I received Gov. Ex. 326A in reply to a letter of November 8, 1938.

Gov. Ex. 327A is a carbon of a letter I sent to Providence Hospital dated November 11, 1937.

Gov. Ex. 328A is a letter I received from Providence Hospital dated Nov. 18, 1937.

Gov. Ex. 329 is a carbon copy of a letter I wrote to Providence Hospital dated Dec. 14, 1937.

Gov. Ex. 326A, 327A, 328A and 329 were offered in evidence. Defendants objected on the grounds of incompetency, irrelevancy, immateriality, the correspondence was hearsay, no conspiracy had been proven, and they were not shown to be authorized. These objections were overruled and exception noted.

Gov. Exs. 326A, 327A and 329 were received in evidence.

Gov. Ex. 17, a copy of a letter from Penniman to Sister Rosa, Superintendent of Providence Hospital, dated Nov. 8, 1937, was read to jury as follows:

"DEAR SISTER ROSA:

For your information, I am attaching hereto a copy of a letter addressed to the Providence Hospital, requesting permission to admit patients who are members of the Group Health Association to the Hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 326A, a letter from Sister Rosa to Penniman, President, Group Health Association, dated November 9, 1937, was read to the jury as follows:

"DEAR SIR:

We acknowledge receipt of your letter of November 8. In reply wish to state that we will accept members of the Group Health Association as patients in Providence Hospital, according to the rules and regulations of our Hospital, at the customary rates for a period not to exceed twenty-one days.

We are enclosing an application form requesting Surgical privileges, to be filled out by Dr. Selders, and on receipt of same will be pleased to place it before our Medical Board for its approval, which is our usual procedure.

Very truly yours, Providence Hospital, per Sister Rosa, Acting Superintendent."

Gov. Ex. 327A, Penniman's reply to Sister Rosa dated November 11, 1937, was read to the jury as follows:

"DEAR SISTER ROSA:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the Providence Hospital, under date of November 8th.

We note with pleasure that the Providence Hospital will accept Members of the Group Health Association as patients, according to the rules and regulations of your hospital, at the customary rates. The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness, for each patient admitted upon the request of the Medical Director.

Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, has filled out and signed the application form requesting surgical privileges which you enclosed and the same is being returned to you herewith. Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the Providence Hospital the fullest cooperation in all matters where it is felt that he would be useful. It would be much appreciated if early consideration of Dr. Selders' application could be made.

Again thanking you, I am

Very sincerely yours, William F. Penniman, President."

I enclosed with my letter of November 11, 1937, an application made by Dr. Selders. When I said "Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the Providence Hospital the fullest cooperation in all matters where it is felt that he would be useful," it was intended to mean that Dr. Selders, if he were there attending a Group Health patient, and an accident; an emergency case, or anything came in, Dr. Selders would be glad to lend his assistance in connection with the work in the hospital—do anything there that they would ask of him cooperatively.

Gov. Ex. 328A, a letter from C. C. Caylor, Secretary, Providence Hospital, to W. F. Penniman, President, Group Health Association, dated November 18, 1937, was read to the jury as follows:

"DEAR MR. PENNIMAN:

The application of Dr. Raymond E. Selders for surgical, gynecological and obstetrical privileges in Providence Hospital was presented to the Executive Staff of the Hospital today. The application was referred to the committee on

Surgical Privileges for consideration and report, which procedure is in accordance with our established custom.

Dr. Selders will be notified promptly upon the Committee's report.

Sincerely yours, C. C. Caylor, M. D., Secretary."

Gov. Ex. 329, a copy of a letter from Penniman to C. C. Caylor, Secretary, Providence Hospital, dated December 14, 1937, was read to the jury as follows:

"DEAR DR. CAYLOR:

On November 18th you informed us that the application of Dr. Raymond E. Selders for surgical, gynecological and obstetrical privileges in Providence Hospital had been referred to the Committee on Surgical Privileges for consideration.

The purpose of my letter at this time is to inquire if this committee has as yet had an opportunity to complete its investigation and whether Dr. Selders' application has been approved.

Your prompt reply will be appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 330 is a reply to my letter of November 8, addressed to Columbia Hospital. Gov. Ex. 331, dated November 11, is a letter I sent to Columbia Hospital. Gov. Ex. 332 is a carbon copy of a letter which I sent to Capt. Chester Wells. Gov. Ex. 333 is a carbon copy of a letter which I sent to Col. Ashburn. Gov. Ex. 334 is a reply which I received from Col. Ashburn.

Gov. Exs. 18, 330-334, inc., were offered in evidence.

Defendants objected on the ground of incompetency, irrelevancy, immateriality, hearsay, no conspiracy had been proved particularly involving Washington hospitals. These objections were overruled and exception noted.

Gov. Exs. 18, 330-334, inc., were received in evidence.

The following exhibits were read to the jury.

Gov. Ex. 18 is a copy of a letter written by Penniman to Capt. Chester Wells, President, Board of Trustees, Columbia Hospital, dated November 8, 1937:

"DEAR CAPTAIN WELLS:

For your information I am attaching hereto a copy of a letter addressed to the Columbia Hospital, requesting per-



mission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 330 is a letter from P. M. Ashburn, Superintendent, Columbia Hospital, dated November 9, to Mr. Penniman.

"DEAR SIR:

I acknowledge receipt this morning of your letter of November 8th, requesting Columbia Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, and also that Dr. Raymond E. Selders be allowed to attend these patients while hospitalized.

I have no doubt that the Executive Committee of the Board of Directors, to which I shall submit this matter at its meeting on Monday, November 15th, will be glad to agree to accept members of your organization for customary hospital service upon the request of its Medical Director.

As for the request that Dr. Selders be allowed to treat these patients while they are in the hospital, I must inform you that nobody is allowed to treat patients in the hospital except physicians who have been appointed to either the regular or the courtesy staff by the Board of Directors. Dr. Selders has not been so appointed, nor has he made application for appointment. I therefore take pleasure in forwarding herewith a form of application and a letter of information and instructions in regard to such application. I would add that applications received from medical men desiring courtesy privileges are uniformly referred to the Medical Board of the hospital which considers and makes recommendations in regard to them to the Board of Directors. So far as my experience and observation go, the

Board of Directors has always accepted the Medical Board's recommendations.

The next meeting of the Medical Board will be on the evening of Tuesday, November 23rd, and I recommend that Dr. Selders' application be submitted before that date.

Yours very truly, P. M. Ashburn, Superintendent."

Attached to Col. Ashburn's letter is a form notice to the doctor headed "Dear Doctor:" and instructing him on the steps to be taken by him to obtain courtesy privileges.

Gov. Ex. 331 is a letter from Penniman to Columbia Hospital dated November 11, 1937:

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the Columbia Hospital for Women, under date of November 8th.

We note with pleasure your statement that you have no doubt that the Executive Committee of the Board of Directors, to which you will submit this matter, at its meeting on Monday, November 15th, will be glad to accept members of the Group Health Association for customary hospital service, upon the request of the Medical Director.

With reference to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while so hospitalized, we have had Dr. Selders complete the application, which you enclosed with your letter, and the same is being returned to you herewith.

Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the Columbia Hospital for Women the fullest cooperation in all matters where it is felt that he would be useful.

An early reply from you will be appreciated.

Very sincerely yours, William F. Penniman, President."

I enclosed with my letter of November 11, 1937, an application filled out by Dr. Selders.

The following exhibits were read to the jury:

Gov. Ex. 332 is a letter from Penniman to Capt. Wells, President, Board of Trustees, Columbia Hospital, dated November 18, 1937:

"DEAR CAPTAIN WELLS:

Please accept my very sincere thanks for your very prompt and courteous reply to my letter of November 8th, requesting the admission of members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, also to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized.

Colonel Ashburn, your Medical Superintendent, wrote us very promptly, stating that he had no doubt that the Executive Committee of the Board of Directors, to which he would submit this matter at its meeting on Monday, November 15th, would be glad to agree to accept members of our organization for customary hospital service upon the request of its Medical Director.

With respect to our request concerning Dr. Selders, Colonel Ashburn enclosed a form on which he could make application, together with a letter of information and instructions with regard to preparing such application. The application form was promptly filled out by Dr. Selders and returned to the Columbia Hospital for Women, addressed to the Attention of Colonel Ashburn, under date of November 11th.

Because of the extreme urgency of this matter, we are hopeful of a prompt and favorable reply.

With very regards, I am,

Sincerely yours, William F. Penniman, President."

Gov. Ex. 333 is a letter from Penniman to Col. Ashburn dated December 14, 1937:

"DEAR COLONEL ASHBURN:

You will recall our letter written to you under date of November 11th in response to your letter of November 9th concerning our request to have the Columbia Hospital for Women admit members of the Group Health Association for customary medical service and to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized.

We would deeply appreciate knowing whether or not the Executive Committee of the Board of Directors has as

yet had an opportunity to act on Dr. Selders' application which was submitted to you with our letter of November 11th.

Your prompt reply will be very much appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 334 is Col. Ashburn's reply to Mr. Penniman dated December 15, 1937:

"MY DEAR MR. PENNIMAN:

Replying to your note of yesterday, I have the honor to inform you that Dr. Selders' application for courtesy privileges has not yet gone from the Medical Board to the Board of Directors or its Executive Committee.

The Medical Board will hold its next meeting on December 28th, and it may then make a recommendation, but I can not know that it will.

Very truly yours, P. M. Ashburn, Superintendent."

After I had sent Dr. Selders' application I talked with Sister Rosa, the superintendent of Providence Hospital.

I received Gov. Ex. 335 from Sister Rodriguez. Gov. Ex. 336 is a carbon copy of a letter which I wrote to Sister Rodriguez dated December 14, 1937. Gov. Ex. 337 is the reply which I received from Sister Rodriguez dated December 16, 1937. Gov. Ex. 338 is a copy of a letter which I sent to Sister Rodriguez on December 18, 1937. I cannot identify Gov. Ex. 339, which is dated December 27, 1937. Gov. Ex. 340 bears the signature of Dr. Selders.

Gov. Exs. 19, 20, 335, 336, 337, 338 and 340 were offered in evidence.

Defendants objected on the grounds that these letters were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Exs. 19, 20, 335, 336, 337, 338 and 340 were received in evidence.

Gov. Exs. 19 and 20 were letters from William F. Penniman to Georgetown University Hospital dated November 8, 1937. Both of these letters are substantially the same as the letters of Mr. Penniman to other hospitals of that day which were just read.

The following exhibits were read to jury:

Gov. Ex. 335 is a letter from Sister Rodriguez, Superintendent, Georgetown University Hospital, to Mr. Penniman dated November 18, 1937:

"MY DEAR MR. PENNIMAN:

I have referred your letter of November 8th to the Executive Staff for their consideration.

I shall be pleased to communicate with you concerning their decision.

Sincerely yours, Sister Mary Rodriguez."

Gov. Ex. 336 is a copy of a letter from Penniman to Sister Rodriguez of Georgetown University Hospital dated December 14, 1937:

"DEAR SISTER RODRIGUEZ:

On November 18th, you acknowledged receipt of our letter dated November 8th stating that it had been referred to the Executive Staff for their consideration. You will recall that our letter requested the Georgetown University Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, and to permit Dr. Raymond E. Selders, attached to the staff of the Group Health Association to attend these patients while hospitalized.

Would you be good enough to inform us whether or not the Executive Staff has as yet had an opportunity to take action on our request.

Your prompt reply will be appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 337 is Sister Rodriguez's reply to Mr. Penniman dated December 16, 1937:

"MY DEAR MR. PENNIMAN:

Your letter dated November 8, was referred to the Executive Staff at its last regular meeting, December 13, 1937.

I have been instructed to inform you that the hospital will be glad to admit patients from the Group Health Association.

It is however, and has been for some time, a regulation of this institution that no physicians or surgeons shall be



permitted to treat patients within the hospital except those whose formal applications have been approved by the Credential Committee.

To this date we have not received a formal application from Dr. Selders for privileges to practice in the Georgetown University Hospital.

With every good wish, I remain

Sincerely yours, Sister Mary Rodriguez."

Gov. Ex. 338 is Mr. Penniman's reply to Sister Rodriguez:

MY DEAR SISTER RODRIGUEZ:

I acknowledge with pleasure the receipt of your letter of December 16th, in which you advise that you have been instructed to inform us that the Georgetown University Hospital will be glad to admit patients who are members of the Group Health Association.

I am aware of the regulations of the various hospitals with respect to the requirement of having Dr. Selders' application approved by the Committee on Credentials, before he is permitted to treat patients while so hospitalized. Each of the hospitals, however, have their own application blanks which they forwarded for completion by Dr. Selders. I assume that the Georgetown University Hospital likewise has an application blank of this type. If you would be good enough to forward a blank, Dr. Selders will be happy to immediately fill it out and return it to you.

Pending such investigation as is found to be necessary, some of the hospitals have been good enough to grant permission to Dr. Selders to treat emergency cases, explaining that this is a customary privilege extended to physicians and surgeons who are duly licensed to practice in the District of Columbia. If this temporary courtesy could be extended to Dr. Selders in the interim period, it would be greatly appreciated.

Thanking you, I am,

Very sincerely yours, William F. Penniman, President."

Gov. Ex. 340 is a letter dated December 28, 1937, addressed to Sister Rodriguez:

DEAR SISTER MARY RODRIGUEZ:

I wish to apply for admission to the courtesy staff of the Georgetown University Hospital, and will appreciate it very

much if you will kindly forward me the necessary application blanks.

Very respectfully, Raymond E. Selders, M. D.,  
Surgeon."

Gov. Exs. 21 and 22 were offered in evidence.

Gov. Ex. 341 is the reply to my letter of November 8 which I received from Dr. Eisenman, Superintendent of Garfield Hospital, dated November 9. Gov. Ex. 342 is a carbon copy of a letter which I wrote to Garfield Hospital on November 11, 1937. Gov. Ex. 344 is a letter which I received from Dr. Eisenman dated November 20, 1937. Gov. Ex. 345 is a copy of a letter which I wrote to Dr. Eisenman dated Dec. 2, 1937. Gov. Ex. 346 is a carbon copy of a letter which I wrote to Dr. Eisenman on December 14, 1937. Gov. Ex. 347 is a letter which I received from Dr. Eisenman dated December 17, 1937.

Gov. Exs. 341, 342, 344, 345, 346, 347 and 348 were offered in evidence.

Defendants objected, including Gov. Exs. 21 and 22, on the grounds that they were incompetent, irrelevant, immaterial, no conspiracy had been proven, that they were hearsay and contained expressions of opinions. These objections were overruled and exception noted.

Gov. Exs. 21, 22, 341, 342, 344, 345, 346, 347, and 348 were received in evidence.

The following exhibits were read to the jury:

Gov. Ex. 21 is a letter from Penniman to Garfield Hospital dated November 8, 1937:

"GENTLEMEN:

The Group Health Association, Inc., a mutual voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the Garfield Hospital to admit members of

the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 22 is a letter from Penniman to Aspinwall, President of Garfield Hospital, dated December 8, 1937:

"DEAR MR. ASPINWALL:

For your information, I am attaching hereto a copy of a letter addressed to the Garfield Memorial Hospital, requesting permission to admit patients who are members of the Group Health Association to the hospital upon the request of the Medical Director.

Also, a request to permit Dr. Raymond E. Selders, Surgeon, who is attached to the staff of the Group Health Association, to attend these patients while hospitalized.

For your further information, there is attached a record of Dr. Selders' education, training and experience.

Your assistance in obtaining prompt and favorable action will be very much appreciated.

Very truly yours, William F. Penniman, President."

Gov. Ex. 341 is a letter from Dr. Eisenman to Mr. Penniman dated November 9, 1937:

"MY DEAR MR. PENNIMAN:

"Acknowledge receipt of your communication under date of November 8, 1937, on the Hospitalization of members of your organization.

Our By-Laws require that all physicians and surgeons, to be eligible to practice in this Hospital, must be appointed by the Board of Directors. The paragraphs of By-Laws applicable to your request are Article VI, Par. 2 and 2-F., and read as follows:

Par. 2. The Medical Staff shall consist of all those physicians and surgeons who may be appointed by the Board of Directors to serve the Hospital in any professional capacity; and it shall be divided into the following groups:

Par. 2-f. *Courtesy Staff*: Consisting of active practitioners who, being qualified by training and experience to give competent care to their patients in the hospital, have been recommended by the Advisory Committee of the Medical Staff and approved by the Board of Directors.

I am therefore enclosing herewith application blanks for privilege to practice for such physicians and surgeons as may desire to utilize our facilities.

You state that the Group Health Association will be responsible for the payment of the costs of Hospitalization at customary rates. Our schedule of rates are specified in pamphlet enclosed herewith.

Will be pleased to confer with you at the Hospital any time convenient to you.

Yours very truly, Francis J. Eisenman, M. D., Superintendent.

Gov. Ex. 342 is a letter from Mr. Penniman to Garfield Hospital dated November 11, 1937, attention: Dr. Eisenman, Superintendent.

GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the Garfield Memorial Hospital, under date of November 8th.

With reference to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend patients who are Members of the Association while hospitalized in the Garfield Memorial Hospital, Dr. Selders has completed the application, which you enclosed with your letter, and the same is being returned to you herewith.

Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the

Garfield Memorial Hospital the fullest cooperation in all matters where it is felt that he would be useful.

An early reply will be much appreciated.

Very sincerely yours, William F. Penniman, President."

Gov. Ex. 344 is a letter from Dr. Eisenman, Superintendent of Garfield, to Mr. Penniman dated November 29, 1937:

"MY DEAR MR. PENNIMAN:

Confirming our conversation of Saturday, November 27th, on the subject of Hospitalization of Patients in Garfield Memorial Hospital, desire to state that our customary rates are as follows:

\$4.50 per day for accommodations in a two-bed room, plus all services such as routine laboratory charges, \$3.50 for entire stay in Hospital. Use of operating or Delivery Room, \$5.00 to \$15.00, depending on the nature of care and length of time used and special medicines, dressings, etc. The rate of \$4.50 includes meals as ordered by the attending physician, ordinary medicines on ward and divided attention of Staff Nurses and House Staff on duty.

Patients are admitted upon arrangements made with physicians and surgeons privileged to practice. Should any physician or surgeon privileged to practice medicine in the District of Columbia, but not on our Courtesy Staff list, desire to have his, (or her), patient admitted to our hospital in an emergency the patient is accepted. The physician or surgeon is then required to make formal application on blank furnished by the hospital for the continuance of this privilege.

Will be pleased to consider a flat per diem rate, covering everything except special medicines and treatments, anaesthesia, X-Ray, and services of Special Nurses, as soon as I can review the ever changing increased cost of Hospitalization.

Sincerely yours, Francis J. Eisenman, M. D., Superintendent."

Gov. Ex. 345 is a letter from Mr. Penniman to Dr. Eisenman, Superintendent of Garfield Hospital, dated December 2, 1937:



"DEAR DR. EISENMAN:

I acknowledge with pleasure the receipt of your letter of November 29th, confirming our conversation of Saturday, November 27th, on the subject of hospitalization of patients in Garfield Memorial Hospital.

I note that your customary rates are \$4.50 per day for accommodations in a two-bed room, plus all services such as routine laboratory charges, \$3.50 for entire stay in hospital. Use of operating or delivery room, \$5.00 to \$15.00, depending on the nature of care and length of time used and special medicines, dressings, etc. Also, that the rate of \$4.50 includes meals as ordered by the attending physician, ordinary medicines on ward and divided attention of Staff Nurses and House Staff on duty. I further note, that you will be pleased to consider a flat per diem rate, covering everything except special medicines and treatments, anaesthesia, x-ray, and services of special nurses, as soon as you can review the ever changing increased cost of hospitalization.

In reply, may I say, that until such time as you are in position to give us a flat per diem rate, your customary rates, as stated above are acceptable. I also desire at this time to express my appreciation for your courtesy extended to Dr. Selders, in granting permission to hospitalize and attend an emergency case, several days ago.

I take pleasure in handing you herewith a copy of the By-Laws of the Group Health Association. Your attention is directed to the rate mentioned in these by-laws for hospitalization, which is superseded by the accepted rates named in your letter.

With very kind regards, I am,

Yours very truly, William F. Penniman, President."

Gov. Ex. 346 is a letter from Penniman to Dr. Eisenman, Superintendent of Garfield Hospital, dated December 14, 1937:

"DEAR DR. EISENMAN:

Under date of November 11th, I returned to you the application of Dr. R. E. Selders, Surgeon, attached to the Staff of the Group Health Association, for permission to be placed upon the courtesy staff of the Garfield Memorial Hospital.

If I recall correctly in my interview with you, you stated that this matter had been referred to a special committee. The purpose of my letter at this time, is to inquire if this committee has completed its investigation and whether Dr. Selders has yet been approved.

Your prompt reply will be appreciated.

With my personal regards, I am,

Yours very truly, William F. Penniman, President."

Gov. Ex. 347 is a letter from Dr. Eisenman, Superintendent of Garfield Hospital, to Mr. Penniman dated December 17, 1937:

"MY DEAR MR. PENNIMAN:

Acknowledge receipt of your letter of December 14, 1937, and in reply beg to state that the application of Dr. Selders was referred by the Committee, on the recommendation of the Surgical Service of the Medical Staff of the Hospital, to the Washington Academy of Surgeons, who I understand had their meeting and considered Dr. Selders application, but have made no report to date.

Will advise you as soon as any definite action has been taken.

Yours very truly, Francis J. Eisenman, M. D., Superintendent."

Gov. Ex. 348 is a letter from Dr. Eisenman to Dr. Raymond E. Selders dated January 25, 1938:

"MY DEAR DR. SELDERS:

The Temporary Privileges granted you as a Member of the Courtesy Staff of this Hospital, awaiting action on your application for use of our facilities here, has, I regret to inform you, been withdrawn by the Board of Directors of the Hospital, this date, on the recommendation of the Medical Staff of the Hospital, until such time as the legality of the organization, now before the Courts, has been definitely decided.

Yours very truly, Francis J. Eisenman, M. D., Secretary to the Board."

I think that on January 25, 1938, Dr. Selders was granted temporary privileges at Garfield Hospital for emergency cases.

Gov. Ex. 23 was offered in evidence.

Gov. Ex. 349 is a reply which I received to my letter of November 8. This letter is from W. A. Bloedorn, Medical Director of George Washington University Hospital. Gov. Ex. 350 is a carbon copy of a letter which I sent to George Washington University Hospital dated November 15, 1937. Gov. Ex. 351 is a carbon copy of a letter which I sent to Dr. Bloedorn dated December 14, 1937.

Gov. Exs. 349, 350, 351, 24 and 25 were offered in evidence.

Gov. Ex. 352 is a letter to me from Lewis H. Taylor, President, Sibley Hospital, dated November 10, 1937. This letter is a reply to my letter of November 8. Gov. Ex. 353 is a carbon copy of a letter which I wrote to Dr. Lewis H. Taylor on November 26, 1937. Gov. Ex. 354 is a carbon copy of a letter which I wrote to Dr. Lewis H. Taylor on December 14, 1937. Gov. Ex. 355 is an original letter which I received from Dr. Taylor dated December 18, 1937. Gov. Ex. 356 is a letter which I received from Dr. Taylor dated January 20, 1938. Gov. Ex. 357 is an original letter which I received from Dr. Taylor dated November 17, 1937. Gov. Ex. 358 is a carbon copy of a letter which I received from Dr. Taylor dated November 18, 1937.

Gov. Exs. 27, 352-358, inc., were offered in evidence.

Gov. Ex. 359 is a letter which I received from Mattie M. Gibson, Superintendent, Children's Hospital, dated November 16, 1937, in reply to my letter of November 8. Gov. Ex. 360 is an original letter which I sent to Miss Gibson on November 18, 1937. Gov. Ex. 362 is an original letter which I sent to Miss Gibson, Superintendent of Children's Hospital, on December 14, 1937. Gov. Ex. 363 is a reply from Miss Gibson, dated December 15, 1937. Gov. Ex. 364 is a letter which I sent to Miss Gibson dated December 18, 1937. Attached to this letter is the application of Dr. Raymond E. Selders.

Gov. Exs. 26, 359, 360, 362, 363 and 364 were offered in evidence.

Gov. Ex. 365 is a letter which I wrote to Mr. Henry P. Blair dated November 8, 1937. Mr. Blair is Chairman of the Executive Committee, the Episcopal Eye, Ear, Nose and Throat Hospital. Gov. Ex. 366 is a letter which I received in reply to my letter from Henry P. Blair dated No-

vember 11, 1937. Gov. Ex. 367 is an original letter which I sent to Mr. Blair dated November 18, 1937.

Gov. Exs. 28, 29, 365, 366, and 367 were offered in evidence.

Gov. Ex. 368 is an original letter which I received from B. B. Sandidge, Superintendent, Emergency Hospital, dated November 9, 1937, in reply to my letter of November 8. Gov. Ex. 369 is a carbon copy of a letter which I sent to Central Dispensary and Emergency Hospital dated November 11, 1937. Gov. Ex. 370 is a letter which I received from Gist Blair, President of Emergency Hospital, dated November 15, 1937. Gov. Ex. 371 is a carbon copy of a letter which I wrote to Gist Blair on December 14, 1937. Gov. Ex. 372 is a letter which I received from Gist Blair dated December 17, 1937. Gov. Ex. 373 is a letter which I received from Gist Blair dated December 30, 1937.

Gov. Exs. 368, 369, 370, 371, 372, and 373 were offered in evidence.

The Court thereupon rendered its decision upon the admissibility of certain documents, rulings upon which had been reserved.

Gov. Ex. 71 was admitted in evidence.

The Court ruled that Gov. Exs. 325, 326, 327 and 328 for identification were not admissible. Government counsel limited the offer to show the parties present and their official capacity. It was thereupon ruled that counsel may state these facts to the jury.

Defendants objected to Gov. Exs. 349-373, inc., on the grounds of immateriality, irrelevancy, incompetency, hearsay and that no conspiracy had been shown. Objections overruled and exception noted.

Gov. Exs. 349-373, inc., were admitted in evidence.

Defendants objected to Gov. Exs. 24-30, inclusive, on the grounds of immateriality, irrelevancy, incompetency, hearsay and that no conspiracy had been shown. Objections overruled and exception noted. These documents were admitted to show the fact that these applications were made to the hospital and the action of the hospital with reference thereto.

Gov. Exs. 24-30, inc., were admitted in evidence.

WILLIAM C. KILPATRICK, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am employed in the Auditing Division of the Reconstruction Finance Corporation. In 1937 and 1938 I was supervisor of the tax section of HOLC. I became actively interested in Group Health in January, 1937, and became a member. At that time I was Director of the Federal Credit Union in the HOLC and through its activities I became interested in Group Health. I first heard of Group Health from Mr. Zimmerman. I attended the first organization meeting in January, 1937. The organization meeting was held in the Departmental Auditorium; two or three hundred employees of the HOLC were present. The employees were asked if they were interested in forming such an organization. There was quite an unanimous response and everybody seemed interested and wanted to go ahead; I heard no dissents. I was elected Vice-President and Trustee in April of 1937. The Board of Trustees elected me Vice-President and William F. Penniman, President and R. T. Berry as Secretary, C. K. Berlin as Assistant Treasurer. I served as Vice-President until I became President in January, 1938, succeeding Mr. Penniman. When I became President in 1938 there was a continued stalemate in respect to the admission of the members of our staff to courtesy privileges in the Washington hospitals. Approximately 75 elective operations were on the books awaiting hospital treatment. An elective operation is one that may be necessary where the patient elects to have it as distinguished from an emergency operation which must be performed, regardless. Physicians had determined that these operations were necessary some time or other. None of these patients were receiving treatment in the hospitals.

Dr. Brown was the first Medical Director. Dr. Raymond E. Selders, Dr. Stephen Hulbert and Dr. Halstead were on the medical staff when I became President; Dr. Lee had been on the staff and resigned. Part-time men at first were Drs. Scandiffio and Richardson. Compensation for the doctors ranged from \$2000 per annum for part-time service to \$7200 for full-time service. Dr. Brown was drawing \$7200. Dr. Richardson was employed to take care



of house calls, because there were so many house calls at the time that it disrupted the operations of the clinic to have doctors called out from their work during the day. Dr. Brown selected every one of the doctors and recommended that they be put on the payroll. Early in 1938 Dr. Scandiffio went on full time at \$6000 per annum. Dr. Hulburt started at \$2000, was raised to \$4800 and resigned in April of 1938. Dr. Frederick Moretti performed eye refractions for \$5 each. At the time we entered the arrangement with Dr. Moretti there were about 200 eye refractions awaiting attention, which were worked down and later he was given more. Dr. Moretti was with us six months, until we obtained an eye man, Dr. Virginus Dabney who came in March or April. We also obtained Dr. Halstead who came in the summer of 1938.

We started Group Health with approximately 900 members, all employees of HOLC. On request of the several other Government departments, we threw open the membership list and later on we increased the representation to forty-odd bureaus, agencies and departments here in Washington, which increased the membership to about 2600. We had a limitation of 3300, which we felt we could not exceed safely, because of the limited facilities of the clinic. We never obtained the maximum of 3300. When I became President, I knew Mr. Penniman had been corresponding with the Washington Hospitals; on assuming office I corresponded with the hospitals.

Gov. Ex. 374 is a letter I sent to Children's Hospital dated February 2, 1938.

Gov. Ex. 374 was offered in evidence.

Defendants objected on the ground that it was incompetent, immaterial, and irrelevant and that no conspiracy had been proven, and that it was hearsay. Objections overruled and exception noted.

Gov. Ex. 374 was received in evidence.

The following exhibits were read to the jury.

Gov. Ex. 27 is a letter from Mr. Penniman to Children's Hospital dated November 8, 1937:

"The Group Health Association, Inc., a mutual, voluntary organization, has been created by the employees of the Federal Home Loan Bank Board and its agencies for the

purpose of providing themselves and dependent members of their families with medical and surgical care and, when necessary, with hospitalization in recognized hospitals of high standing.

As the representative of the Group Health Association, I hereby request the Children's Hospital to admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

Request is also made to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized. For your information, we are attaching hereto a record of Dr. Selders' education, training and experience.

The Group Health Association will be responsible for the payment of the costs of hospitalization at customary rates, in each case for a period limited to 21 days for any one illness for each patient admitted upon the request of the Medical Director.

If you desire further information or a conference with us, we shall be glad to have you let us know. Because of the importance of this request, however, an early and favorable reply will be appreciated.

Very truly yours, Wm. F. Penniman, President."

Gov. Ex. 359 is a letter from Mattie M. Gibson, Superintendent of Children's Hospital, to Mr. Penniman dated November 16, 1937:

"DEAR MR. PENNIMAN:

At a meeting of the Board of Directors of the Children's Hospital, held November 15th, I was authorized to reply to your letter of November 8th, addressed to the Hospital and to Mr. Drayton as President, as follows:

The Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its charter, rules and regulations.

This pertains to indigent, semi-indigent, and a very limited number of pay patients—as we have only twenty-seven beds available for pay patients.

All physicians treating patients while in the hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by its Board of Directors after

individual examination into the qualifications of applicants by regular hospital channels.

Yours sincerely, Mattie M. Gibson, Superintendent."

Gov. Ex. 360-is a letter from Mr. Penniman to Miss Gibson, Superintendent of Children's Hospital, dated November 18, 1937:

"MY DEAR MISS GIBSON:

Please accept our thanks for your very prompt and courteous reply to our letter, addressed to The Children's Hospital, under date of November 8th, in which we requested permission to admit patients who are Members of the Group Health Association, at the request of its Medical Director, Dr. Henry Rolf Brown, also to permit Dr. Selders, Surgeon, attached to the staff of the Group Health Association, to attend these patients while hospitalized.

I note with much pleasure that at the meeting of the Board of Directors of The Children's Hospital, held November 15th, you were authorized to advise that the Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its charter, rules and regulations. I further note that this pertains to indigent, semi-indigent, and a very limited number of pay patients, since there are only 27 beds available for pay patients.

I want you to know, and may I ask that you convey to your Board of Directors, our appreciation for their favorable action on this request.

Relative to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the Staff of the Group Health Association, to attend these patients while hospitalized, we note that all physicians treating patients while in the hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by its Board of Directors, after individual examination into the qualifications of applicants by regular hospital channels. I assume that the proper procedure would be to have Dr. Selders fill out an application form or questionnaire. If this is the case, would you be good enough to furnish us with the proper form to be used by Dr. Selders in making this application.

With very kind regards, I am, Cordially yours,  
Wm. F. Penniman, President."

Gov. Ex. 362 is a letter from Mr. Penniman to Miss Gibson dated December 14, 1937:

"DEAR MISS GIBSON:

You will recall that we wrote to you on November 18th, relative to your letter of November 16th concerning our request to admit patients who are members of the Group Health Association and to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association to attend these patients while hospitalized.

As stated in our letter of November 18th, we note that all physicians treating patients while in the Children's Hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by the Board of Directors. We also stated that Dr. Selders will gladly fill out an application form for the consideration of the Board.

As we have not heard further from you we would appreciate knowing what action has been taken thus far on our request. Would you be good enough to favor us with a prompt reply.

Yours very truly, Wm. F. Penniman, President."

Gov. Ex. 363 is a letter from Miss Gibson to Mr. Penniman dated December 15, 1937:

"DEAR SIR:

I regret this delay in replying to your letter of November 18th, as I was led to believe that the forms had been sent to your office, but due to the quite serious illness of Mrs. Tabb, my secretary, it must have been left undone.

I am herewith sending these forms for the use of members of your medical staff.

Sincerely yours, Mattie M. Gibson, Superintendent."

Gov. Ex. 364 is a letter from Mr. Penniman to Miss Gibson, Superintendent of Children's Hospital, dated December 18, 1937:

"MY DEAR MISS GIBSON:

I acknowledge with pleasure the receipt of your letter of December 15th.

Relative to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the Group Health Association, to attend patients who are members of the Group Health Association, while hospitalized in the Children's Hospital, I take

pleasure in handing you herewith application which you forwarded and which has been prepared by Dr. Selders.

He has asked me to say to you that upon approval of his application; he will be happy to extend to the Children's Hospital the fullest cooperation in all matters where it is felt that he or his services would be useful.

Pending such investigation as is found to be necessary, some of the hospitals have been good enough to grant permission to Dr. Selders to treat emergency cases, explaining that this is a customary privilege extended to physicians and surgeons who are duly licensed to practice in the District of Columbia. If this temporary courtesy could be extended to Dr. Selders in the interim period, it would be greatly appreciated.

Thanking you, I am,

Very sincerely yours, Wm. F. Penniman, President."

Gov. Ex. 374 is a letter from Mr. Kirkpatrick to Miss Gibson, Superintendent of Children's Hospital, dated February 2, 1938:

"MY DEAR MISS GIBSON:

This will refer to your letter of December 15, 1937, addressed to Mr. William F. Penniman, and also Mr. Penniman's reply of December 18, 1937, both of which relate to an application of Dr. Raymond E. Selders, a member of the staff of Group Health Association, Inc., for courtesy-privileges at The Children's Hospital.

Inasmuch as this matter is one of great importance to us, we will very much appreciate a prompt reply to this letter indicating what action has been taken in the matter of Dr. Selders' application.

Very sincerely yours, W. C. Kirkpatrick, President."

Defendants' objection to Gov. Ex. 375 that it was immaterial, incompetent, irrelevant, hearsay and no conspiracy had been proven was overruled with an exception and it was received in evidence.

Gov. Ex. 375, a letter from Miss Gibson, Superintendent of Children's Hospital, to Mr. Kirkpatrick dated February 3, 1938, was read to the jury as follows:

"Dear Mr. Kirkpatrick:

This refers to your letter of February 2nd regarding Dr. Selders' application for courtesy privileges at this Hospital.



As is our custom, we have referred this matter to the Credentials Committee of our Medical Staff and we shall see that you are promptly informed when that Committee has acted upon Dr. Selders' application.

With all good wishes to you, I am

Sincerely yours, Mattie M. Gibson, Superintendent."

I did not receive any further word or notification from Miss Gibson or the Children's Hospital between that time and July 28, 1938. I wrote again to the hospital on July 28, 1938, and sent a similar letter to substantially all of the other hospitals. Gov. Ex. 376 is a copy of my letter dated July 28, 1938, which I sent to Mr. Drayton, President of the Board of Trustees of Children's Hospital and is similar to the letters I sent to all the other hospitals.

Gov. Ex. 376 was offered in evidence. Defendants objected that it was immaterial, incompetent, irrelevant, and hearsay. Objection overruled and exception noted.

Gov. Ex. 376 was received in evidence.

Gov. Ex. 376, a letter from Mr. Kirkpatrick to Mr. Drayton, President of the Board of Trustees of Children's Hospital, dated July 28, 1938 was read to the jury as follows:

"MY DEAR MR. DRAYTON:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Children's Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President."

The witness continued:

Justice Bailey is a member of this Court. The decision mentioned is in the Declaratory Judgment suit brought by Group Health in January, 1938, seeking a declaration of whether or not we were a corporation illegally engaged in the practice of medicine and whether we were engaged in the insurance business. Justice Bailey's decision on those questions was favorable to our Association in both instances and generally held that we were not engaged in any way in the practice of medicine and that we were in no way involved in the business of insurance, and the purpose of

Gov. Ex. 376 was to bring Judge Bailey's decision to the attention of the hospitals and in the light of that decision to again renew our pleas for admission of those doctors to those hospitals.

Gov. Ex. 377 is a letter I received from Mr. Drayton in response to my letter of July 28, 1938.

Gov. Ex. 377 was offered in evidence and the defendants objected on the grounds that it was incompetent, immaterial, irrelevant, no conspiracy has been proven, and hearsay. Objection was overruled and exception noted.

Gov. Ex. 377, a letter on the letterhead of Charles D. Drayton dated August 4, 1938, was read to the jury as follows:

"MY DEAR MR. KIRKPATRICK:

Yours of July 28th has been forwarded to me here.

As soon as our board meets in September I shall take up the question as to what position we should now take respecting Group Health Association, Inc., and advise you on behalf of Children's Hospital. Since the matter is one of great importance and since our position heretofore has resulted from formal action taken by our board, you will understand that I am not able now to announce any change. I trust, therefore, you will allow us sufficient time to reconsider the matter in the light of subsequent developments.

Very truly yours, Charles D. Drayton, President,  
The Children's Hospital."

Gov. Ex. 378 is a copy of my reply to that letter. Gov. Ex. 379 is a copy of a letter I sent to Mr. Drayton. Gov. Ex. 380 is a copy of a letter I received from Mr. Drayton. Gov. Ex. 381 is a copy of a letter I received from Mr. Drayton.

Gov. Exs. 378, 379, 380 and 381 were offered in evidence. Defendants objected on the ground that they were immaterial, incompetent, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Exs. 378, 379, 380 and 381 were received in evidence. The following exhibits were read to the jury:

Gov. Ex. 378 is a letter from Mr. Kirkpatrick to Mr. Drayton dated August 6, 1938:

"DEAR MR. DRAYTON :

Thank you very much indeed for your letter of August 4, 1938. -

It will be entirely satisfactory to the Association if you will take up at your next Board of Trustees meeting the question of Dr. Selders' admission to the courtesy staff of Children's Hospital.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 379 is a letter from Mr. Kirkpatrick to Mr. Drayton dated September 16, 1938:

"DEAR MR. DRAYTON :

On August 4, 1938, in response to my letter of July 28, 1938, you were good enough to advise me that the subject matter of my letter would be referred to your Board of Directors some time in September.

I shall appreciate it very much if I may be advised by you whether or not your Board has yet had an opportunity to give consideration to the subject matter of my letter of July 28, 1938.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 380 is a letter to Mr. Kirkpatrick from Mr. Drayton dated September 19, 1938:

"DEAR MR. KIRKPATRICK :

Replying to yours of September 16th, when I wrote you that The Children's Hospital Board would meet in September, I was under a misapprehension. We have no September meeting, but just as soon as the matter can be given consideration at the October 10th meeting, I will advise you further concerning our position.

Very truly yours, Charles D. Drayton, President."

Gov. Ex. 381 is a letter from Mr. Drayton to Mr. Kirkpatrick dated November 2, 1938:

"DEAR MR. KIRKPATRICK :

I have not been more prompt in replying to your several communications dated July 28 and August 6, 1938, asking that Dr. Raymond E. Selders, a member of your staff, be admitted to the courtesy staff of the Children's Hospital, and that he may attend members of your association, ad-

mitted as patients there, for the reason that, in view of the several court proceedings now under way involving Group Health Association, Inc., it did not seem possible for us to give any final answer on any aspect of the controversy.

I believe you have been heretofore furnished with a copy of the memorandum of April 1, 1938, embodying the rule promulgated by our medical staff and adopted by our Board governing admissions to the hospital where an emergency exists and also the attendance upon such children of members of your staff. However, I am enclosing herewith another copy of that memorandum.

Yours very truly, Charles D. Drayton, President."

The memorandum referred to by Mr. Drayton in Gov. Ex. 381 I saw for the first time on the receipt of the letter. I don't know of any other court proceedings at the time of the letter. There was a bill in equity filed by certain members of the District Medical Society to enjoin us from operating involving substantially the same grounds that were involved in the suit for Declaratory Judgment, namely, that we were a corporation illegally engaged in the practice of medicine and that we were in the insurance business. When the letter of November 2, 1938 (Gov. Ex. 381) was written grand jury proceedings also were pending. Group Health doctors were never admitted to Children's Hospital during the period I was president down to December 20, 1938. Gov. Ex. 381 is the last communication I received from Mr. Drayton.

I sent Columbia Hospital a letter similar to my letter of February 2, 1938, to Children's Hospital.

Mr. Lewin: All right. Now, I won't bother to read that, then.

The Court: No, Gentlemen, where the letter is similar or substantially similar, I think we may group them, may we not, merely by that identification. You may check up and see, if you wish.

Mr. Lewin: Yes.

The Court: That will save reading.

Gov. Ex. 383 was offered in evidence with the statement that it is substantially similar to the letter sent Children's

Hospital. The objection of the defendants that it was incompetent, irrelevant, immaterial, no conspiracy had been proven, and hearsay, was overruled and exception noted.

Gov. Ex. 383 was received in evidence.

Gov. Ex. 382 is a reply which I received to Gov. Ex. 383.

Gov. Ex. 382 was offered in evidence. Defendants objected on the grounds of incompetency, irrelevancy, and immateriality, no conspiracy had been proven and hearsay. This objection was overruled and exception noted.

Gov. Ex. 382 was received in evidence.

Gov. Ex. 382, a reply from P. M. Ashburn, the Superintendent of Columbia Hospital, to Mr. Kirkpatrick's letter of February 2, 1938, was read to the jury as follows:

"MY DEAR MR. KIRKPATRICK:

Replying to your inquiry of yesterday, I have the honor to inform you that the Medical Board of this hospital held no meeting in December and that at its January meeting it failed to act on Dr. Selders' application for courtesy privileges. Consequently, it has made no recommendation in the matter to the Board of Directors, and Dr. Selders' status in relation to this hospital remains unchanged.

Very sincerely yours, P. M. Ashburn."

I wrote a letter identical to the letter which I sent to Children's Hospital to Capt. Chester Wells of Columbia Hospital in regard to Judge Bailey's decision. This is Gov. Ex. 384.

Gov. Ex. 384 was received in evidence but was not read as it was similar to another exhibit.

Gov. Ex. 385 is a letter from Capt. Wells to Mr. Kirkpatrick dated August 20, 1938; and is in reply to my letter of July 28. Gov. Ex. 386 is a letter which I sent to Capt. Wells. Gov. Ex. 386 was produced from the files of the Columbia Hospital.

Gov. Exs. 385, 386 and 387 were offered in evidence. The defendants objected on the grounds of incompetency, irrelevancy, immateriality, no conspiracy had been proven and hearsay. This objection was overruled and exception noted.

Gov. Exs. 385, 386 and 387 were received in evidence.



The following exhibits were read to the jury:

Gov. Ex. 385 is a letter from Wells to Kirkpatrick dated August 20, 1938:

"MY DEAR MR. KIRKPATRICK:

Your letter of July 28th has just come to my attention, as I have been out of the country since the middle of June. Although Group Health Association is not an organization with which this hospital can deal in the matter of granting privileges to Doctors, with whom it deals directly, I do not mind informing you that no action has ever been taken upon Dr. Selders' application for courtesy privileges here because the Medical Board, upon whose advice the Board of Directors relies for decision as to the professional qualifications of applicants for privileges, has not made a recommendation as to all classes of the privileges sought by Dr. Selders, and the Board of Directors has been unwilling to act upon only a part of his application. Meanwhile he has had temporary privileges for normal obstetrical cases but has not used them.

On April 23rd he withdrew his application for privileges in pathological obstetrics.

It is expected that the Medical Board will make a recommendation as to Dr. Selders at the time of its next meeting, on September 8th, and that the Board of Directors can act upon it at its meeting on September 21st.

Meanwhile, I invite your attention to the fact that numbers of your members have been hospitalized here and treated, presumably, by physicians of their own choice, and that the Association has assumed responsibility for their hospital bills, but has not yet paid them.

Will you be so good as to expedite the payment of these bills?

Very truly yours, Chester Wells, President."

Gov. Ex. 386 is a letter from Kirkpatrick to Capt. Wells dated August 25, 1938:

"DEAR MR. WELLS:

Thank you very much indeed for your letter of August 20, 1938.

We are pleased to note that Dr. Selders' application for admission to the Courtesy Staff at Columbia Hospital for

Women will be considered by your Medical Board on September 8 and by your Board of Directors on September 21.

I was not aware that there were any bills yet in our possession owing to Columbia Hospital For Women for which this Association is liable. I have already asked our Administrator to expedite payment of these bills and appreciate your calling this matter to my attention.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 387 is a letter from Ashburn to Dr. Raymond E. Selders dated April 19, 1938:

"DEAR DR. SELDERS:

The Medical Board of this hospital has considered your application for courtesy privileges in Classes 1, 2, and 3, and does not feel that you have submitted evidence of that special training and skill habitually required of applicants for the privileges which you seek.

Will you therefore kindly submit any additional evidence at your disposal tending to show your skill in obstetrics and gynecology.

Very sincerely yours, P. M. Ashburn, Secretary,  
Medical Board."

Gov. Ex. 389, which is a letter from Dr. Selders to the superintendent of Columbia Hospital dated September 2, 1938, and obtained from the files of the Columbia Hospital under subpoena, was offered in evidence. The objection of the defendants, of incompetency, irrelevancy, immateriality, no conspiracy proven, and hearsay, was overruled and exception noted. Gov. Ex. 389 was received in evidence and read to the jury as follows:

"Colonel P. M. Ashburn, Superintendent, Columbia Hospital for Women.

DEAR COLONEL ASHBURN:

Pursuant to our telephone conversation of yesterday, I am writing this letter in request for certain hospital privileges in the Columbia Hospital for Women as defined and outlined below:

First, I request permission to attend normal obstetrical deliveries. My training and experience in this work is as follows:

Second, I wish to renew my request for permission to do major surgery in the Columbia Hospital for Women.

I should like to have each of the above requests acted upon separately and independently by those in charge.

My references are already on file in your office.

Respectfully, Raymond E. Selders, M.D."

After August 20, 1938, I did not receive any further communication from Columbia Hospital or from Capt. Wells or Col. Ashburn. No doctor on the staff of Group Health was ever admitted to Columbia Hospital between that time and the date of the indictment.

Gov. Ex. 390 is a letter which I wrote to Gist Blair, President of Emergency, dated February 2, 1938. Gov. Ex. 391 is Major Blair's reply to my letter of February 2, 1938. Gov. Ex. 393 is a copy of my letter to Mr. Blair dated July 28, 1938. Gov. Ex. 394 is the reply which I received from B. B. Sandidge, Superintendent of Emergency Hospital, dated July 28, 1938. Gov. Ex. 395 is my letter to Major Blair dated September 16, 1938.

Gov. Exs. 390, 391, 393, 394 and 395 were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection was overruled and exception noted.

Gov. Exs. 390, 391, 393, 394 and 395 were received in evidence.

Gov. Ex. 28 is a letter from Mr. Penniman to Emergency Hospital dated November 8, 1938. Being substantially identical with the other letters which Mr. Penniman wrote to the Washington hospitals on that date it was not read to the jury.

Gov. Ex. 29 is a letter from Mr. Penniman to Major Gist Blair dated November 8, 1938. This letter being similar to other letters which Mr. Penniman wrote on the same date to the Washington hospitals, it was not read to the jury.

The following exhibits were read to the jury:

Gov. Ex. 368 is a letter from B. B. Sandidge, Superintendent of Emergency Hospital, to Mr. Penniman dated November 9, 1937:

"Mr. William F. Penniman, President, Group Health Association.

DEAR SIR:

We acknowledge receipt of your communication of the 8th instant, requesting that this hospital admit members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown, and under the services of Dr. Raymond E. Selders, Surgeon, attached to the Staff of Group Hospitalization Association, with enclosure of record of Dr. Selders' qualifications.

We beg to advise that we shall be most happy to place your letter before the authorities of the hospital, who are authorized to pass upon matters of this kind, for their consideration.

Very truly yours, Emergency Hospital, B. B. Sandidge, Superintendent."

Gov. Ex. 369 is Mr. Penniman's reply dated November 11, 1937, to Emergency Hospital, attention B. B. Sandidge, Superintendent:

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to Emergency Hospital, under date of November 8th.

We note with pleasure your statement that you will be pleased to place our letter before the authorities of the hospital; who are authorized to pass upon matters of this kind, for their consideration.

We trust that our request will be given prompt and favorable consideration and that we may have the pleasure of hearing from you at an early date.

Sincerely yours, William F. Penniman, President."

Gov. Ex. 370 is Major Gist Blair's reply to Mr. Penniman dated November 15, 1937:

"MY DEAR MR. PENNIMAN:

Replying to your letter of November 8th, requesting permission to admit patients who are members of Group Health Association, 'upon the request of the Medical Director', and saying that Dr. Raymond E. Selders is on the staff of

Group Health Association, I beg to say that Emergency Hospital has adopted, by its rules, a so-called Courtesy List of physicians who are subject to the control of our Staff under practically all conditions:

This Courtesy List is based upon certain fundamentals requisites, laid down by our Staff, and, while I have every friendly wish toward some of your objects, and feel satisfied that the Executive Committee and Board of this Hospital are in many ways sympathetic with the purposes of your organization providing medical and surgical care, and, when necessary, hospitalization in recognized hospitals of high standing, we do not feel at present that we can make any changes in our rules. This hospital, as are other hospitals in this city, is open to the reception of all patients.

Dr. Selders or other representatives of Group Health Association must first be placed on our Courtesy List before they can treat patients in this hospital. Your letter and Dr. Selders' credentials have been referred to the proper authorities."

Gov. Ex. 371 is a letter from Mr. Penniman to Mr. Blair dated December 14, 1937:

"DEAR MR. BLAIR:

Under date of November 15th, you acknowledged receipt of our letter dated November 8th and advised us that Dr. Raymond E. Selders or other representatives of the Group Health Association must first be placed on your courtesy list before they could treat patients in the Emergency Hospital.

As you stated that our letter together with Dr. Selders' credentials have been referred to the proper authorities, would you be good enough to inform us whether or not those authorities have as yet had an opportunity to take action on the matter.

It would be deeply appreciated if you would immediately notify us in order that we might know of the status of this matter.

Yours very truly, William F. Penniman, President."

Gov. Ex. 372 is a letter from Major Blair to Mr. Penniman dated December 17, 1937:

"DEAR SIR:

Replying to your letter of December 14th, with reference to action of the hospital authorities upon Dr. Selders' ap-



plication for courtesy privileges at this institution, I beg to advise that our Executive Staff has not yet held a meeting, and as soon as this is done, you will be advised accordingly.

Very truly yours, Gist Blair, President."

Gov. Ex. 373 is a letter from Major Blair, President of Emergency Hospital, to Mr. Penniman dated December 30, 1937:

"DEAR MR. PENNIMAN:

With further reference to your communications, requesting that Emergency Hospital furnish hospitalization to patients who are members of Group Health Association, Inc., I beg to advise that there can be no question about Emergency Hospital offering its services to any patient, regardless of color, race or creed, and its doors are open twenty-four hours every day throughout the year.

However, as is consistent with every well regulated hospital, and in conformity with the rules of the American College of Surgeons, the Emergency Hospital does undertake to exercise authority and care to see that physicians, who are granted the privilege to treat patients on its premises, are qualified in every respect in their particular branch of the profession and are so recognized by the medical profession.

In accordance with this idea, and in order to safeguard the patient, the Board of Directors, at its regular meeting, held April 17th, 1936, unanimously adopted a resolution, providing that any physician who desires to treat patients in Emergency Hospital must make formal application, that his professional qualifications must be satisfactory to the professional staff, and as an index of his professional training and integrity that he must be a member in good standing of the District of Columbia Medical Society.

The Emergency Hospital will be glad to have any physician make application for courtesy privileges, and if his qualifications meet our requirements, I feel sure that all privileges will be extended to him.

Since Dr. Selder's application does not meet these requirements, the Board has not seen fit to grant him the privileges which he requested.

Very truly yours, Emergency Hospital, Gist Blair,  
President."

Gov. Ex. 390 is a letter from Mr. Kirkpatrick to Mr. Blair dated February 2, 1938.

"MY DEAR MR. BLAIR:

This will refer to your letter of December 30, 1937, addressed to Mr. William F. Penniman, relating to an application of Dr. Raymond E. Selders for membership on the courtesy staff of your hospital.

It is the desire of the Board of Trustees of Group Health Association, Inc., to discuss the subject matter of your letter with the Board of Trustees of Central Dispensary and Emergency Hospital and to that end it is respectfully requested that representatives of Group Health Association, Inc., be accorded an opportunity to meet with your Board of Trustees at a time and place most convenient to them.

The matter we wish to discuss is of great importance to this Association and we feel also to Central Dispensary and Emergency Hospital. To the end that we may have a complete understanding of the problems involved between both parties it will be greatly appreciated if the request made above may be granted.

We will consider it a very great favor if we may have a prompt reply to this letter.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Rx. 391 is a letter from Major Blair to Mr. Kirkpatrick dated February 3, 1938:

"MY DEAR MR. KIRKPATRICK:

Your letter of February 2d has been received, and today the same was brought to the attention of the Executive Committee at its regular session at the hospital, and by resolution the Committee authorized Dr. James F. Mitchell and myself to confer with you or any member of your Board of Trustees, and if you will telephone the Superintendent at this hospital, and have arrangements made which will be convenient to Dr. James F. Mitchell, who is very much occupied, and myself, we will be glad to meet you.

In your letter, relating to Dr. Raymond E. Selders, you suggest that your Board of Trustees meet with our Board of Trustees, and I would suggest that this is not practical since our Board of Trustees will not meet for several months, and matters of this kind are referred to our Execu-

tive Committee to decide what is advisable for the hospital to do under the circumstances.

Very truly yours, Gist Blair, President."

As a result of the communications which have just been read in evidence, I had a conference with Major Blair, President of the Board of Trustees of Emergency Hospital and Dr. Mitchell. This conference was held in Major Blair's office. Mr. Sandidge and Mr. Horace Russell, General Counsel of HOLC and a trustee of Group Health were present.

The following exhibits were read to the jury:

Gov. Ex. 393 is a letter from Mr. Kirkpatrick to Mr. Blair, President of the Board of Trustees of Emergency Hospital, dated July 28, 1938. This letter is identical with the other letters written by Mr. Kirkpatrick referring to the Bailey decision and for that reason was not read.

Gov. Ex. 394 is a letter from B. B. Sandidge, Superintendent of Emergency Hospital, to Mr. Kirkpatrick dated July 28, 1938:

"MY DEAR MR. KIRKPATRICK:

I beg to acknowledge receipt of your letter of July 28, addressed to Major Gist Blair, President of the Board of Trustees, in which you request that Dr. Raymond E. Selders be admitted to the courtesy staff of this institution, and to further advise you that Major Blair is out of the city, and that I shall be glad to present your communication to him just as soon as he returns.

Very truly yours, B. B. Sandidge."

Gov. Ex. 395 is a copy of a letter from Mr. Kirkpatrick to Mr. Blair dated September 16, 1938:

"DEAR MR. BLAIR:

On July 28, 1938, Mr. B. B. Sandidge, Superintendent of Central Dispensary and Emergency Hospital, advised me, in response to my letter to you of July 28, 1938, that you were at that time out of the city and that my letter would be referred to you upon your return.

It will be very much appreciated if I may have a reply to my letter of July 28, 1938.

Very truly yours,"

I never received a reply from Mr. Blair to my letter of July 28, 1938, or my letter of September 16, 1938. The doctors of Group Health were never admitted to Emergency Hospital's courtesy staff during the year 1938. Gov. Ex. 396 and 397 are copies of letters which I wrote.

Gov. Exs. 396 and 397 were offered in evidence. Defendants objected on the grounds that they were incompetent, irrelevant, immaterial, no conspiracy had been proven, and hearsay. This objection was overruled and exception noted.

Gov. Exs. 396 and 397 were received in evidence.

Gov. Ex. 26 is a carbon copy of a letter from Mr. Penniman to Episcopal Eye, Ear and Throat Hospital dated November 8, 1937. This letter is similar to the others sent to the various hospitals and for this reason was not read to the jury. Gov. Ex. 365 is a letter from Mr. Penniman to Mr. Henry Blair dated November 8, 1937, enclosing a copy of the letter which he addressed to the Episcopal Eye, Ear, Nose and Throat Hospital. It is substantially similar to the other letters written on that date, and for this reason was not read to the jury.

The following exhibits were read to the jury:

Gov. Ex. 366 is a letter from Henry P. Blair, First Vice-President of Episcopal Hospital, dated November 11, 1937, and addressed to William Penniman:

"DEAR SIR:

In reply to your recent letter addressed to the Episcopal Eye, Ear and Throat Hospital I beg to advise you that the Hospital is always open for admission of patients along lines of its specialized work in accordance with its rules and regulations. There would seem to be no reason why any request received from Dr. Brown should not be honored. I am quite sure that patients will be thus admitted on the responsibility of Group Health Association for the costs of hospitalization at our customary rates for similar accommodations in the Hospital and for the period of twenty-one days as indicated by your letter.

In regard to the admission of physicians or surgeons to practice on our Staff it will be necessary that the By-Laws of the institution be followed which provide for recommen-



dation of the applicant by our Medical Staff and confirmation and appointment by the Board of Governors.

I will be very glad to consult with you further in regard to this matter and of course realize you will note that the character of work of our Hospital is along specialized lines.

Very truly yours, Henry P. Blair, First Vice President."

Gov. Ex. 367 is a letter from Mr. Penniman to Mr. Henry Blair dated November 18, 1937:

"DEAR MR. BLAIR:

Please accept our thanks for your very prompt and courteous reply to our letter, addressed to the Episcopal Eye, Ear and Throat Hospital, under date of November 8th, requesting permission to admit patients who are members of the Group Health Association for customary hospital service upon the request of its Medical Director, Dr. Henry Rolf Brown.

I note with pleasure your statement that there would seem to be no reason why any request received from Dr. Brown should not be honored.

With reference to the admission of Surgeons or Physicians to practice on your staff, I recognize that the character of the work of your hospital is along specialized lines and I shall be very happy to consult with you further in respect to this matter.

With very kind regards, I am,

Sincerely yours, William F. Penniman, President."

Gov. Ex. 396 is a letter from Mr. Kirkpatrick to Mr. Henry Blair dated July 28, 1938:

"MY DEAR MR. BLAIR:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Virginius Dabney, a member of our staff, be admitted to the courtesy staff of Episcopal Eye, Ear and Throat Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, — — —, President."



Gov. Ex. 397 is a letter from Mr. Kirkpatrick to Mr. Henry Blair dated September 16, 1938:

"DEAR MR. BLAIR:

On July 28, 1938, the writer addressed a letter to you requesting admission to your Courtesy Staff of Dr. Virginius Dabney. At this writing we have not received a reply to our letter and we would appreciate it very much if we might have some word from you with respect to the question.

Very truly yours, W. C. Kirkpatrick."

I never received any replies from Episcopal Hospital or Mr. Blair to either of my letters dated July 28 and September 16, 1938. I never had any further word from them down to the date of the indictment. In the spring of 1938, 50 or 60 Group Health patients were treated at the Episcopal Hospital by Dr. Dabney. I was never successful in getting the doctors of Group Health to be able to treat Group Health patients as such in the Episcopal Hospital.

Gov. Exs. 398 and 399 are copies of letters which I wrote: Gov. Ex. 400 is a letter which I received from Dr. Bloedorn.

Gov. Exs. 398, 399 and 400 were offered in evidence. Defendants objected on the grounds that they were incompetent, irrelevant, immaterial, no conspiracy had been proven, and hearsay. Objection was overruled and exception noted.

Gov. Exs. 398, 399 and 400 were received in evidence.

Gov. Ex. 23 is a letter from Mr. Penniman to the George Washington University Hospital dated November 8, 1937. This letter is similar to the letters sent to the other hospitals on that date and for this reason was not read to the jury.

Gov. Ex. 349, a letter from Dr. Bloedorn to Mr. Penniman dated Nov. 11, 1937, was read to the jury as follows:

"DEAR MR. PENNIMAN:

Receipt is acknowledged of your letter of November 8th, requesting permission for Dr. Raymond E. Selders, attached to the Staff of the Group Health Association, for hospital privileges in the George Washington University Hospital.

I am enclosing herewith a blank form which all applicants for hospital privileges are requested to fill in.

These applications are then presented at our Staff Conferences and referred to the Committee on Hospital Privileges.

Very truly yours, W. A. Bloedorn, M. D., Medical Director."

Gov. Ex. 350, a letter from Mr. Penniman to Dr. Bloedorn, Medical Director of the George Washington University Hospital, dated November 15, 1937, was read to jury as follows:

"GENTLEMEN:

Please accept our thanks for your very prompt and courteous reply to our letter addressed to the George Washington University Hospital, under date of November 8th.

With reference to our request to permit Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association, to attend patients who are Members of the Association while hospitalized in the George Washington University Hospital, Dr. Selders has completed the application which you enclosed with your letter, and the same is being returned to you herewith.

Dr. Selders has asked me to say to you that upon approval of his application he will be happy to extend to the George Washington University Hospital the fullest cooperation in all matters where it is felt that he would be useful.

An early reply will be much appreciated.

Very sincerely yours, William F. Penniman, President."

Gov. Ex. 398 is a carbon copy of a letter from Mr. Kirkpatrick to George Washington University Hospital dated February 2, 1938. This letter renews the request and is similar to the letters to the other hospitals written on this date and for this reason was not read to the jury. Gov. Ex. 399 is a letter from Mr. Kirkpatrick to George Washington University Hospital dated July 29, 1938, referring to Justice Bailey's decision establishing the legality of Group Health Association and renewing the request for the admission of GHA doctors to the Washington hospitals. This letter is similar to the others of this same date and was not read to the jury.

Gov. Ex. 400, a letter from Dr. Bloedorn to Mr. Kirkpatrick dated September 24, 1938, was read to the jury as follows:

"DEAR MR. KIRKPATRICK:

The application of Dr. Raymond E. Selders has been referred again to our Committee on Hospital privilege for the Committee's recommendation.

Sincerely yours, Walter A. Bloedorn, M. D., Acting Dean."

Gov. Ex. 400 was the last letter which I received from George Washington University Hospital or from Dr. Bloedorn. No doctor attached to Group Health Association or on its staff was ever admitted to courtesy privileges at the George Washington Hospital.

Early in 1938 I attempted to obtain courtesy staff privileges for Group Health doctors at Casualty Hospital. Gov. Ex. 401 bears the signature of Dr. Selders. Gov. Ex. 402 is a copy of a letter which I wrote. Gov. Ex. 403 is a reply which I received to Gov. Ex. 402. Gov. Ex. 404 is a letter I received from Casualty Hospital. Gov. Ex. 405 is a copy of a letter which I wrote. Gov. Ex. 406 is a letter which I received from Casualty Hospital. Gov. Ex. 407 is a copy of a letter which I wrote.

Gov. Exs. 401-407, inclusive, were offered in evidence. Defendants objected on the grounds that they were irrelevant, incompetent, immaterial, no conspiracy had been proven, and hearsay. Objection was overruled and exception noted.

Gov. Exs. 401-407 were received in evidence.

Gov. Ex. 401, a letter from Dr. Selders, Acting Medical Director of Group Health, to Casualty Hospital, dated April 20, 1938, was read to the jury as follows:

"DEAR DR. BRADEN:

I have received, filled out, and I enclose herewith the two application blanks for admission to the courtesy staff of the Casualty Hospital.

In event that any additional information is desired, I shall be very glad to supply it.

Yours very truly, Raymond E. Selders, M. D., Acting Medical Director."

Dr. Selders became the Acting Medical Director of Group Health in the early part of 1938 during Dr. Brown's illness.

Dr. Brown did not return as Medical Director after his illness was over. He resigned on the 15th of April and Dr. Selders became Medical Director. Dr. Selders continued as Medical Director throughout the rest of 1938.

Gov. Ex. 402, a letter from Mr. Kirkpatrick to Dr. Harry F. Allmond, Secretary, Board of Directors, Casualty Hospital, dated June 7, 1938, was read to the jury as follows:

"DEAR DR. ALLMOND:

It will be appreciated if you will consider this a formal request to admit to the services of the Casualty Hospital members of Group Health Association, Inc., and also to admit to the courtesy staff of Casualty Hospital members of the medical staff of this Association.

Any information you may require concerning the experience and qualifications of any of our staff will be readily furnished upon your request.

This Association now has a membership of approximately 2,700 persons who with their families and dependents number between 5,500 and 6,000 persons we are endeavoring to serve.

We shall consider it a great favor if you will present this matter to your Board of Directors and advise the writer of its action.

Very truly yours, W. C. Kirkpatrick, President."

In the spring of 1938 I sought an interview with officials of the Casualty Hospital. I was accompanied by Ormand Loomis, Executive Assistant of the Home Owners' Loan Corp. and a trustee of Group Health. We met with Mr. Rogers, Mr. Baker, the treasurer and a director and Miss Rogers, the superintendent of the hospital, and Dr. Richard Young, Chief of the medical staff. The purpose of this meeting was to discuss the admission of members of our staff to the courtesy staff at Casualty Hospital.

The following exhibits were read to the jury:

Gov. Ex. 403 is a letter from S. H. Rogers, President, Board of Directors, Casualty Hospital, to Mr. Kirkpatrick, dated August 2, 1938:

"DEAR MR. KIRKPATRICK:

I wish to acknowledge your favor of the 28th, ultimo, in regard to admission of Dr. Raymond E. Selders to our Courtesy Staff.



As the recommendation of our Medical Staff in regard to Dr. Selders was made without consideration of the question of the legality of your organization, it is my personal opinion that Justice Bailey's decision will make no difference; however, if Dr. Selders will submit a new application for the Courtesy Staff, I will forward it to our Medical Staff requesting them to take into consideration all new developments so that their recommendations will be ready for the action of our Board of Directors at its next meeting, which is Tuesday, September 13, 1938.

Very truly yours, S. H. Rogers, President, Board of Directors, Eastern Dispensary and Casualty Hospital."

Gov. Ex. 404 is a letter from E. M. Rogers, Superintendent of Casualty Hospital, to Mr. Kirkpatrick dated August 5, 1938:

"DEAR SIR:

In accordance with your request we are enclosing herewith the application blanks for Dr. Selders. Upon the return of the blanks, they will be forwarded to the Medical Staff for action.

Very truly yours, E. M. Rogers, Superintendent, Eastern Dispensary and Casualty Hospital."

Gov. Ex. 405 is a carbon copy of a letter from Mr. Kirkpatrick to Mr. S. H. Rogers, President, Board of Directors, Casualty Hospital, dated August 12, 1938:

"DEAR MR. ROGERS:

In response to your letter of August 2, 1938, there is enclosed an application executed by Dr. Raymond E. Selders for admission to the courtesy staff of your hospital.

I shall appreciate receiving word from you when this matter has been acted on by your Board of Directors at its next meeting, Tuesday, September 13, 1938.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 406 is a letter from President Rogers of Casualty to Mr. Kirkpatrick dated September 14, 1938:

"DEAR MR. KIRKPATRICK:

Referring to my letter of August 2nd and Dr. Selders' application for membership to our Courtesy Staff, at our



Board Meeting I last night learned for the first time that the Medical Staff had recessed its meetings for three months during the summer and did not hold its regular meeting September 1st, so we had no recommendation from them on Dr. Selders' application to act upon.

I was misinformed on this subject when I wrote you as of August 2nd and regret that my letter was misleading as to the time we would act upon Dr. Selders' application.

Very truly yours, S. H. Rogers, President Board of Directors. Eastern Dispensary and Casualty Hospital."

Gov. Ex. 407 is a carbon copy of a letter from Mr. Kirkpatrick to Mr. S. H. Rogers, President, dated September 15, 1938:

"DEAR MR. ROGERS:

Thank you very much indeed for your letter of September 14, 1938.

We are hopeful that your medical staff will soon be in a position to report favorably to your Board concerning Dr. Raymond E. Selders' application for admission to the Courtesy Staff of your hospital.

We shall appreciate receiving word from you when action has been taken.

Very truly yours, W. C. Kirkpatrick, President."

After September 15, 1938, I did not receive any further word from Mr. Rogers or from the Casualty Hospital. No Group Health doctors were ever admitted to the courtesy staff of Casualty Hospital.

Gov. Ex. 408 is a copy of a letter which I wrote. Gov. Ex. 409 is a copy of a letter which I received. Gov. Ex. 410 is a copy of a letter which I wrote. Gov. Ex. 412 is a letter which I received. Gov. Ex. 413 is a letter which I wrote. Gov. Ex. 414 is a letter which I received. Gov. Ex. 415 is a copy of a letter which I wrote. Gov. Ex. 416 is a letter which I received. Gov. Ex. 417 is a letter which I received from Dr. Taylor, President of Sibley Hospital. Gov. Ex. 418 is a letter which I wrote. Gov. Ex. 419 is a letter which I received. Gov. Ex. 420 is a letter signed by Mr. Berry, Secretary-Treasurer of Group Health, addressed to Dr. Taylor. Gov. Ex. 421 is a letter which I received from Dr. Taylor of Sibley. Gov. Ex. 422 is a copy of a let-

ter which I wrote. Gov. Ex. 423 is a letter which I received from Miss Taylor Owen, a member of Group Health Association and a patient at Sibley Hospital. Gov. Ex. 424 is a copy of a letter which I wrote. Gov. Ex. 425 is a letter which I received from Miss Owen. This letter purports to be a letter from Dr. Taylor to Miss Owen.

Gov. Exs. 408, 409, 410, 412-425, inclusive, were offered in evidence. Defendants objected to Gov. Exs. 408, 409, 410, 412-425, inclusive, on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted except that ruling was reserved upon Gov. Exs. 417-425, inclusive.

Gov. Exs. 408, 409, 410, 412-416, inclusive, were received in evidence.

Gov. Ex. 426 is a letter which was turned over to me by Mr. Howard F. Vickery, a member of Group Health Association who was hospitalized at Sibley Hospital. Gov. Ex. 427 is a copy of my letter to Dr. L. H. Taylor, President of Sibley Hospital, dated August 5, 1938. Gov. Ex. 428 was delivered to me by Mr. Vickery. Gov. Ex. 429 is a copy of my letter to Dr. L. H. Taylor, President of Sibley Hospital, dated August 18, 1938. Gov. Ex. 430 is a letter which I received from Mr. Vickery.

Gov. Exs. 426-430 were offered in evidence. Defendants objected to these documents on the ground that they were incompetent, immaterial, irrelevant, that no conspiracy had been proven, and that they were hearsay. Ruling reserved.

Gov. Ex. 24 is a letter from Mr. Penniman to Sibley Hospital dated November 8, 1937. This letter is similar to ones which have been read and for that reason was not read to the jury. Gov. Ex. 25 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated November 8, 1937. This letter is similar to those which have been read and for this reason was not read to the jury.

The following exhibits were read to the jury.

Gov. Ex. 352 is a letter from Dr. Taylor to Mr. Penniman dated November 10, 1937:

"MY DEAR MR. PENNIMAN:

I am in receipt of your letter of November 8, 1937, relative to the admission of members of the Group Health Association to Sibley Memorial Hospital, upon the request of

your Medical Director, Dr. Henry Rolf Brown. Also, requesting permission for Dr. Raymond Selders to attend these patients while hospitalized here. Your letter to the hospital containing the same request will be submitted to the Board of Directors of this institution at their next meeting which will be held Tuesday, November 16, 1937.

Sibley Hospital is a privately owned and non-profit institution having no governmental connection, and receives no aid from the Community Chest. Under its present rules and regulations all patients are admitted on the service of some physician to whom the use of the hospital privileges has been accorded. Physicians desiring to treat patients in this institution fill out a questionnaire stating the kind of cases they desire to treat and submitting data showing their abilities and experience qualifying them for such privileges. This questionnaire, upon its completion, is returned to the hospital by the applicant and is passed upon by the Medical Council and its recommendations, favorable or otherwise, are submitted to the Board of Directors. The Board either grants or rejects the applicant's request. I am enclosing a questionnaire which Dr. Selders may fill out, if he so desires.

Trusting that I have given you the information desired in your letter to me, I am,

Very sincerely yours, Lewis H Taylor, M. D., President."

Gov. Ex. 353 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated November 26, 1937:

"MY DEAR DR. TAYLOR:

With further reference to your letter to me under date of November 10th, which was in answer to my letter addressed to Sibley Memorial Hospital under date of November 8th, and your further letter of November 17th, I take pleasure in handing you herewith the application which you enclosed and which has been prepared by Dr. Raymond E. Selders, Surgeon, attached to the Staff of the Group Health Association.

Dr. Selders has asked me to say to you that upon approval of his application, he will be happy to extend the Sibley Memorial Hospital the fullest cooperation in all matters where it is felt that he or his services would be useful.

Because of the extreme urgency of this matter, we are hopeful of a prompt and favorable action on Dr. Selders' application.

Very truly yours, William F. Penniman, President."

Gov. Ex. 354 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated December 14, 1937:

"DEAR DR. TAYLOR:

Under date of November 26th I returned to you the application of Dr. Raymond E. Selders, Surgeon, attached to the staff of the Group Health Association for permission to be placed upon the courtesy staff of the Sibley Memorial Hospital.

Would you be good enough to inform us whether or not the Board of Directors has as yet had an opportunity to render a decision on Dr. Selders' application.

Your prompt reply will be appreciated.

Yours very truly, William F. Penniman, President."

Gov. Ex. 355 is a letter from Dr. Taylor, President of Sibley to Mr. Penniman, dated December 18, 1937:

"MY DEAR MR. PENNIMAN:

I wish to acknowledge receipt of your letter of December 14, 1937, relative to the application of Dr. R. E. Selders for certain hospital privileges in this institution. Dr. Selders' application was referred by me to the Executive Committee of the Medical Council. I shall be glad to inform you of the action taken by this Committee when it finally disposes of Dr. Selders' application.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 356 is a letter from Dr. Taylor, President of Sibley, to Mr. Penniman, dated January 20, 1938:

"MY DEAR MR. PENNIMAN:

I am enclosing herewith a carbon copy of a letter to Dr. Raymond E. Selders which is self-explanatory.

In writing to Dr. Selders, I told him that I was forwarding you this copy.

With kind personal regards, I am

Very sincerely yours, Lewis H. Taylor, M. D., President."



The following is the enclosure:

"MY DEAR DR. SELDERS:

Your application for Medical, Minor and Major Surgical, Normal and Abnormal Obstetrical, Minor and Major Gynecological privileges in Sibley Hospital has been considered by the Executive Committee of this Hospital.

Guided by your questionnaire, I wrote to physicians to whom you referred for expressions as to your qualifications for the privileges requested by you. These physicians were:

Dr. G. J. Byrne, Worcester City Hospital, Worcester, Massachusetts.

Dr. Walter E. Lee, Graduate School of Medicine, University of Pennsylvania, Philadelphia, Penn.

Dr. C. L. Brown, Temple University, Philadelphia, Penn.

Dr. John T. Moore, St. Joseph's Infirmary, Houston, Texas.

No response has been received from any of these gentlemen. The Committee feels that sufficient data has not been submitted by you whereby they could come to a proper conclusion in the matter and have been compelled to decline your request.

In the future, should you care to offer supplementary data bearing on your qualifications, the Committee would be happy to reconsider your application.

I am taking the liberty of sending a carbon copy of this letter to Mr. Penniman, who forwarded your application to me.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 357 is a letter from Dr. Taylor, President of Sibley Hospital, to Mr. Penniman, dated November 17, 1937.

Gov. Ex. 358 is a letter from Mr. Penniman to Dr. Taylor, President of Sibley Hospital, dated November 18, 1937. These documents were not read to the jury.

Gov. Ex. 408 is a letter from Mr. Kirkpatrick to Dr. Taylor, President of Sibley Hospital, dated February 2, 1938:

"MY DEAR DR. TAYLOR:

Please refer to your letter of December 18, 1937, addressed to Mr. William F. Penniman, relative to an application of Dr. Raymond E. Selders, a member of the staff



of Group Health Association, Inc., to be accorded privileges of the courtesy staff of Sibley Memorial Hospital.

Inasmuch as this matter is one of much importance to us, we will very much appreciate having word from you as to what action the Executive Committee of the Medical Council has taken.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 409 is a letter from Dr. Taylor to Mr. Kirkpatrick dated February 3, 1938:

"MY DEAR MR. KIRKPATRICK:

I wish to acknowledge your letter of February 2, 1938 relative to the application of Dr. Raymond E. Selders, a member of your staff, for privileges in Sibley Memorial Hospital.

On January 20, 1938, I wrote to Dr. Selders explaining that the Executive Committee of the Medical Council of Sibley Memorial Hospital had considered his application for privileges and had been unable to grant them for the reason that he had not submitted sufficient data for the Committee to arrive at a conclusion. In this letter, I called Dr. Selders' attention to the fact that none of the four physicians to whom he had referred as to his qualifications and to whom I wrote, had answered my letter. Also, that if in the future he wished to submit supplementary data that the Committee would reconsider his case. A carbon of this letter was sent to your predecessor, President William F. Penniman. Since the above date, Dr. Selders has evidently communicated with his references for I have received letters from three of them. In a telephone conversation with Dr. Selders yesterday, I informed him of this fact and told him that I would submit these three letters to the Executive Committee at their next meeting, which would be in about two weeks.

Trusting the information contained above is that which you desire, I am

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 410 is a letter from Mr. Kirkpatrick to Dr. Taylor, President of Sibley Hospital, dated February 8, 1938:

"MY DEAR DR. TAYLOR:

Thank you very much for your letter of February 3, 1938, relative to the application of Dr. Raymond E. Selders for privileges in Sibley Memorial Hospital.

As I now understand the situation you have in your possession sufficient information with respect to Dr. Selders' qualifications to present his application to your Executive Committee at their next meeting which I understand will be held in about two weeks. I shall appreciate it very much if you will advise me what action your Executive Committee takes in the matter.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 412 is a letter from Dr. Taylor to Dr. Selders dated February 24, 1938:

"MY DEAR DR. SELDERS:

Your application for Medical, Major and Minor Surgical, and Major Gynecological privileges in Sibley Memorial Hospital were, at your request, again submitted to the Executive Committee of the Medical Council of Sibley Memorial Hospital for reconsideration of their action in refusing the same.

I regret to inform you that the Committee did not reverse its action and your request has been refused.

Very sincerely yours, Lewis H. Taylor, M. D., President, Sibley Memorial Hospital."

Gov. Ex. 413 is a letter from Mr. Kirkpatrick to Mr. Paul B. Cromelin, President of Board of Trustees, Sibley Hospital, dated July 28, 1938:

"MY DEAR MR. CROMELIN:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Sibley Memorial Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 414 is a reply from M. G. Davis, Secretary of Mr. Cromelin, to Group Health Association, dated July 28, 1938:

"DEAR SIRs:

This will acknowledge receipt of your letter dated July 28, 1938, addressed to Mr. Paul B. Cromelin, President, Board of Trustees, Sibley Memorial Hospital, this city.

I beg to advise you that Mr. Cromelin is at present out of the city and will not return until about August 11th or 12th, at which time your letter will be called to his attention.

Very truly yours, M. G. Davis, Sec'y."

Gov. Ex. 415 is a letter from Mr. Kirkpatrick to Mr. Cromelin dated September 16, 1938:

"DEAR MR. CROMELIN:

On July 28, 1938, your Secretary advised this Association, in response to the writer's letter to you dated that day, that you would return to the city on or about August 11th or 12th and that my letter would be brought to your attention at that time.

I shall appreciate it very much if I may have a reply to my letter.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 416 is a letter from Mr. Cromelin to Mr. Kirkpatrick dated September 23, 1938:

"DEAR SIR:

I beg to acknowledge the receipt of your letter addressed to me as President of the Board of Trustees of Sibley Memorial Hospital at 1140 North Capitol Street, this city. This letter has been forwarded to me at the address at which I have my regular office.

Dr. Lewis Taylor, the President of the Hospital, is in immediate charge of all matters affecting its maintenance and operation, as distinguished from the work of its Board of Trustees of which I am Chairman. I am sorry to have to advise that Dr. Taylor is ill at the present time.

If and when Dr. Selders is, by action of the Board of Trustees, admitted as a member of the courtesy staff of Sibley Memorial Hospital, he will be promptly notified to this effect.

Yours very truly, Paul B. Cromelin."

I did not receive any further communication from Sibley Hospital, Dr. Taylor or Mr. Cromelin. Dr. Selders was never admitted to the courtesy staff of Sibley Hospital.

Gov. Ex. 431 is a copy of a letter which I wrote. Gov. Ex. 432 is a copy of a letter which I wrote. Gov. Ex. 433 is a copy of a letter which I received. Gov. Ex. 434 is a copy of a letter which I wrote. Gov. Ex. 435 is a letter which I received. Gov. Ex. 436 is a letter which I received. Gov. Ex. 437 is a copy of a letter which I wrote. Gov. Ex. 438 is a letter which I received.

Gov. Ex. 431-438, inclusive, were offered in evidence. Defendants objected on the round of incompetency, irrelevancy, immateriality, no conspiracy had been proven, and hearsay. Objections overruled and exception noted.

Gov. Ex. 431-438, inclusive, were admitted in evidence.

The following exhibits were read to the jury.

Gov. Ex. 431 is a letter from Mr. Kirkpatrick to Dr. Eisenman, Secretary to the Board of Garfield Hospital, dated February 2, 1938:

"MY DEAR DR. EISENMAN:

Pursuant to our telephone conversation of last evening, I enclose herewith a copy of a letter which I have written today to Mr. Clarence A. Aspinwall, President of Garfield Memorial Hospital.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 432 is a letter from Mr. Kirkpatrick to Dr. Aspinwall dated February 2, 1938:

"DEAR MR. ASPINWALL:

Under date of January 25, 1938, Dr. Francis J. Eisenman, Secretary to your Board of Trustees, notified Dr. Raymond E. Selders, a surgeon on the staff of Group Health Association, Inc., that your Board had withdrawn Dr. Selders' temporary privileges as a member of the courtesy staff of Garfield Memorial Hospital, effective as of January 25, 1938. Dr. Selders has referred Dr. Eisenman's letter to the writer. In Dr. Eisenman's letter it was stated that the privileges had been withdrawn until such time as the legality of Group Health Association, Inc., had been decided.

We feel there may have arisen some misunderstanding concerning the question of legality of our operation and in order that the question may be discussed and a clear understanding had by both parties, it is respectfully requested

that representatives of Group Health Association, Inc., be accorded the privilege of appearing before your Board of Trustees for the purpose of discussing the situation with them.

We shall be pleased to be present at any time or place most convenient to your Board. Inasmuch as this question is one of great importance to us and we believe to your Board, may we ask that arrangements for our appearance before your Board be made as soon as may be possible.

Very sincerely yours, W. C. Kirkpatrick, President."

Gov. Ex. 433 is a letter from Mr. Aspinwall, President of Garfield Hospital, to Mr. Kirkpatrick, dated February 3, 1938:

"DEAR MR. KIRKPATRICK:

I have your letter of February 2d. It will be a long time before our Board meets. If you want to drop in at my office, 1140 15th Street, and discuss the matter I shall be glad to talk to you.

Yours very truly, (Signed) C. A. Aspinwall, President."

I followed the suggestion of Mr. Aspinwall and visited him at his office shortly after I received his letter. Present at this meeting were Mr. Ormand E. Loomis, a trustee of Group Health, Mr. Louis Reed of the Social Security Board and Mr. Aspinwall.

The following exhibits were read to the jury:

Gov. Ex. 434 is a letter from Mr. Kirkpatrick to Mr. Aspinwall dated July 28, 1938:

"MY DEAR MR. ASPINWALL:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Garfield Memorial Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 435 is a letter from Dr. Eisenman to Mr. Kirkpatrick dated July 29, 1938:



"DEAR SIR:

Acknowledge receipt of your letter of July 28, 1938, addressed to Mr. Clarence A. Aspinwall, President, Board of Trustees, of Garfield Memorial Hospital.

Advise that your communication has been forwarded to Mr. Aspinwall today.

Yours very truly, Francis J. Eisenman, M.D., Secretary, Board of Directors."

Gov. Ex. 436 is a letter from Mr. Aspinwall to Mr. Kirkpatrick dated July 30, 1938:

"DEAR MR. KIRKPATRICK:

I write to acknowledge receipt of your letter of the 28th.

As you know, all applications for courtesy staff privileges are referred to the Staff, and the recommendations of the staff are presented to the Board for final action. Dr. Selders' application will take the usual course.

Yours very truly, C. A. Aspinwall, President."

Gov. Ex. 437 is a letter from Mr. Kirkpatrick to Mr. Aspinwall dated September 16, 1938:

"DEAR MR. ASPINWALL:

Referring to your letter of July 30, 1938, I would appreciate very much having some advice from you as to the action taken by your Board with respect to the application of Dr. Raymond E. Selders for admission to the Courtesy Staff of Garfield Memorial Hospital.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 438 is a letter from Mr. Aspinwall to Mr. Kirkpatrick dated September 20, 1938:

V "DEAR MR. KIRKPATRICK:

In response to your letter of the 16th, only received this morning, up to the time I left for my holiday a month ago, the Staff had made no recommendation regarding the application of Dr. Selders' for admission to the Courtesy Staff of Garfield Hospital.

I shall be going to the Hospital in a day or two, and shall then find out if the Staff has made any recommendation to the Board in regard to this matter.

Yours very truly, C. A. Aspinwall, President."

I did not receive any further communication either from Mr. Aspinwall, Dr. Eisenman or Garfield Hospital relative to this matter. No doctor connected with Group Health was ever admitted to the courtesy staff of Garfield Hospital after January 25, 1938, except for Dr. Selders' temporary admission in the early part of that year. This was revoked on January 25, 1938.

Gov. Ex. 439 is a letter which I wrote. Gov. Ex. 440 is a letter which I received in reply. Gov. Ex. 441 is a letter which I wrote. Gov. Ex. 442 is a letter which I received in reply.

Gov. Exs. 439-442, inclusive, were offered in evidence. Defendants objected upon the grounds that they were immaterial, irrelevant, incompetent, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Exs. 439-442, inclusive, received in evidence.

Gov. Ex. 439 is a letter from Mr. Kirkpatrick to Father O'Leary, President of Georgetown University, dated July 28, 1938. This letter is similar to other letters referring to Judge Bailey's decision as to the legality of Group Health and renewing the application for admission to courtesy privileges. For this reason the letter was not read to the jury.

The following exhibits were read to the jury.

Gov. Ex. 440 is a letter from Father O'Leary to Mr. Kirkpatrick dated July 30, 1938:

"DEAR MR. KIRKPATRICK:

Your letter of July 28, requesting that Dr. Raymond E. Selders, a member of your staff, be admitted to the courtesy staff of Georgetown University Hospital has been received.

I shall be glad to refer the matter to the executive committee of the Hospital staff at its next regular meeting.

Very truly yours, Arthur A. O'Leary, S.J., President."

Gov. Ex. 441 is a letter from Mr. Kirkpatrick to Father O'Leary dated September 16, 1938:

"DEAR FATHER O'LEARY:

On July 30, 1938, you advised the writer that the matter of admission of Dr. Raymond E. Selders to the Courtesy

Staff of Georgetown University Hospital would be referred to the executive committee of the staff at its next regular meeting.

I shall appreciate very much being advised by you as to what action that may have been taken in the meantime.

Very truly yours, W. C. Kirkpatrick, President."

Gov. Ex. 442 is a letter from Father O'Leary to Mr. Kirkpatrick dated October 11, 1938:

"DEAR MR. KIRKPATRICK:

In reply to your letter of September sixteenth, 1938, I wish to state that at the meeting of the Executive Staff of Georgetown University Hospital, held yesterday, it was the decision of the Staff that no change should be made in the case of the refusal to admit Dr. Raymond E. Selders to the Courtesy Staff of Georgetown University Hospital.

Dr. Selders was informed on March 4, 1938, by Dr. Fred O. Coe, Secretary of the Executive Staff, that his application to treat minor surgical, major surgical and gynecological cases at the hospital had been rejected.

Very truly yours, Arthur A. O'Leary, S.J., President."

I did not receive any further communication from Georgetown University Hospital or any authorities of that hospital.

Gov. Ex. 443 is a copy of my letter to Dr. J. B. Gregg Custis, Executive Officer, Board of Trustees, National Homeopathic Hospital. Gov. Ex. 444 is a copy of a letter which I wrote to Mr. Fred McKee, President, Board of Trustees of National Homeopathic Hospital. Gov. Ex. 445 is a letter which I received in reply to Gov. Ex. 444. Gov. Ex. 446 is a letter which I wrote to Mr. McKee. Gov. Ex. 447 is a copy of a letter which I wrote to Mr. McKee.

Gov. Ex. 443-447, inclusive, were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Objection overruled and exception noted.

Gov. Ex. 443-447, inclusive, were received in evidence.

The following exhibits were read to the jury.

Gov. Ex. 443 is a letter from Mr. Kirkpatrick to Dr. J. B. Gregg Custis, Executive Officer of the Board of Trus-

tees of National Homeopathic Hospital dated February 2, 1938:

"DEAR DR. CUSTIS:

This will refer to your letter of November 9, 1937, addressed to Mr. William F. Penniman.

The Board of Trustees of this Association are anxious to discuss with the Board of Trustees of National Homeopathic Hospital the subject matter of your letter. We believe that such a discussion will be helpful to both parties and it is respectfully requested that representatives of Group Health Association, Inc., be accorded the privilege of appearing before your Board at a time and place most convenient to it. If you will be good enough to advise the writer we shall be pleased to make arrangements accordingly.

We will very much appreciate receiving a prompt reply to this letter.

Very sincerely yours, W. C. Kirkpatrick, President."

I did not receive any reply to that letter nor was I ever accorded the privilege of this discussion which I asked for. After this time I never had a discussion with the authorities of National Homeopathic Hospital.

Gov. Ex. 444 is a letter from Mr. Kirkpatrick to the president of National Homeopathic Hospital calling attention to Justice Bailey's decision holding the legality of Group Health and renewing the application. For this reason the letter was not read in evidence.

The following exhibits were read to the jury:

Gov. Ex. 445 is a letter from Mr. McKee to Kirkpatrick dated August 1, 1938:

"DEAR MR. KIRKPATRICK:

Receipt is acknowledged of your favor of the 28th requesting that Dr. Raymond E. Selders be admitted to the courtesy staff of National Homeopathic Hospital.

If you will have Dr. Selders fill in the enclosed application for membership to the courtesy staff and return to me I will see that it is promptly referred to the proper Committee.

Very truly yours, Fred McKee, President, Board of Trustees."

Gov. Ex. 446 is a letter from Mr. Kirkpatrick to Mr. McKee, dated August 4, 1938:

"DEAR MR. MCKEE:

Thank you for your letter of August 1, 1938, with which you enclose a blank form of application for our Surgeon, Dr. Raymond E. Selders, to execute. The form so executed is returned herewith. It will be appreciated if you will advise the writer as to the action of the Committee in the matter of Dr. Selder's application.

Very truly yours, W. C. Kirkpatrick, President."

I did not receive any response to this letter.

Gov. Ex. 447, a letter from Mr. Kirkpatrick to Mr. McKee dated September 16, 1938, was read to the jury as follows:

"DEAR MR. MCKEE:

On August 4, 1938, the writer sent you an application blank executed by Dr. Raymond E. Selders for admission to the Courtesy Staff of National Homeopathic Hospital. In your letter of August 1, 1938, you advised me that the application would be referred to the proper committee promptly.

I shall appreciate it very much if I may have advice from you as to what action may have been taken with respect to the matter.

Very truly yours, W. C. Kirkpatrick, President."

I did not receive any response to Gov. Ex. 447. I did not receive any further word from the authorities of National Homeopathic Hospital with regard to this matter. No doctors connected with Group Health were ever admitted during 1938 to the courtesy staff of National Homeopathic Hospital.

Gov. Ex. 448 is a letter which I wrote to Dr. Caylor, Secretary of Providence Hospital. Gov. Ex. 449 is a letter which I wrote to Sister Rosa, Acting President of the Board of Trustees of Providence Hospital. Gov. Ex. 450 is a copy of a letter which I wrote to Sister Rosa, dated September 16, 1938.

Gov. Exs. 448, 449 and 450 were offered in evidence. Defendants objected on the ground that they were incompetent,



irrelevant, immaterial, no conspiracy had been proven, and hearsay. Objections overruled and exception noted.

Gov. Exs. 448; 449 and 450 were received in evidence.

Gov. Ex. 448 is a letter from Mr. Kirkpatrick to Dr. Caylor, Secretary of Providence Hospital, dated February 2, 1938. This is the usual letter written by Mr. Kirkpatrick and for that reason was not read to the jury. Gov. Ex. 449 is a letter from Mr. Kirkpatrick to Sister Rosa, Acting President of the Board of Trustees of Providence Hospital dated July 28, 1938. This is the usual letter written by Mr. Kirkpatrick and refers to the favorable decision of Mr. Justice Bailey and for this reason was not read to the jury.

Gov. Ex. 450, a letter from Mr. Kirkpatrick to Sister Rosa, dated September 16, 1938, was read to the jury as follows:

“MY DEAR SISTER ROSA:

On July 28, 1938, the writer addressed a letter to you requesting permission for Dr. Raymond E. Selders to be admitted to the Courtesy Staff of Providence Hospital.

It will be very much appreciated if I may have some advice from you as to what action that may have been taken in the matter.

Very truly yours, W. C. Kirkpatrick, President.”

I did not receive any reply to my letters of July 28, 1938, and September 16, 1938. I did not receive any further communication from the authorities of Providence Hospital. No doctor connected with Group Health was admitted to the courtesy staff of Providence Hospital during 1938.

Gov. Ex. 451 is a copy of a letter which I wrote to Mr. Rice, Credit Manager of the Washington Sanitarium. Gov. Ex. 452 is the reply which I received from Dr. Robert A. Hare on behalf of the Washington Sanitarium. Gov. Ex. 453 is a letter which I received from Dr. Hare. Gov. Ex. 455 is a copy of a letter which I wrote to Dr. Hare. Gov. Ex. 456 is a letter which I received from Dr. Hare. Gov. Ex. 457 is a copy of a letter which I wrote Dr. Hare.

Gov. Exs. 451, 452, 453, 455, 456 and 457 were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay. Ruling reserved.

Early in 1938 I approached the Washington Sanitarium to see if I could have Group Health doctors and the patients admitted there. I called on Mr. Rice, the Credit Manager for the hospital, at Tacoma Park. I was accompanied by Mr. Carson, a trustee of Group Health.

On December 20, 1938, about 45 members of Group Health were awaiting hospitalization and elective surgical operations. The reason there is a difference between the number then waiting and the number at the time when I assumed office at the beginning of 1938 was that the operations were postponed and in other cases they resorted to outside physicians to have the operations performed and other members resigned from the Association. By outside physicians I mean doctors in private practice who were not members of the staff of Group Health.

Q. And how were those doctors compensated; do you know?

A. Our doctors?

Mr. Leahy: I object to pure hearsay.

Mr. Lewin: No; I think it is not hearsay.

By Mr. Lewin:

Q. Did you compensate those doctors for this work?

A. I approved their compensation.

Q. And who compensated them?

A. Yes, sir; I signed the checks.

Q. All right. Now, who compensated those outside doctors who were not on the staff of Group Health Association, who performed these operations on Group Health members during '38?

A. Group Health Association compensated them.

Q. So that was an additional expense for medical service to the salaries that you paid your regular staff?

A. It was.

Q. And why was it necessary for them to seek these outside doctors?

Mr. Leahy: I object, if your Honor please.

The Witness: Because the hospitals would not admit our physicians.

Mr. Leahy: Wait just a minute.

The Court: I thought you said—

Mr. Leahy: I don't think it is competent, if your Honor please.

Mr. Burke: Argumentative. The question starts with "Why." It is an argumentative question.

Mr. Lewin: All questions starting with "why" are banned?

The Court: What was the question, Mr. Lewin?

Mr. Lewin: I want to know why it was necessary for these members of Group Health to seek these outside doctors.

Mr. Leahy: How would he know except from hearsay?

Mr. Lewin: Oh, mercy! Hearsay! You are overworking that.

Mr. Leahy: I don't think so, if your Honor please.

The Court: I think it is in the form of a conclusion, isn't it?

Mr. Lewin: He paid the bills for all those.

Mr. Leahy: It does not answer the question.

The Court: I am agreeing with you absolutely.

Mr. Lewin: You agree with me?

The Court: Except that I think he should state why he paid them, why it was necessary for him to employ them and pay them.

Mr. Lewin: That is what I wanted to know. According to Mr. Burke's idea any question beginning with "Why" is bad.

The Court: You sometimes misconstrue my remarks. I am with you.

Mr. Lewin: I am so pleasantly surprised, your Honor.

By Mr. Lewin:

Q. Now, Mr. Kirkpatrick, tell us—

The Witness: May I have the question repeated, please?

Mr. Lewin: Gracious, I am afraid to do it.

Mr. Leahy: Go ahead; ask it again.

The Court: Let me put the question; then there will be no objection to it.

Mr. Richardson: I am not so sure about that.

By the Court:

Q. What was your reason for compensating these doctors?

A. Well, primarily because they presented us a bill for their services.

Q. Well, what was your current obligation?

A. Well, these members of Group Health Association were entitled to receive this service, and if we couldn't supply it with our own staff we felt obligated to supply it elsewhere.

The Court: I think that covers it.

By Mr. Lewin:

Q. Why couldn't you supply it with your own staff?

A. For the reason that our own staff was not admitted to the hospitals to perform the operations that were needed.

Gov. Ex. 458 is a letter which I wrote to Dr. Thomas E. Neill, President of the Medical Society of the District of Columbia, dated March 21, 1938. Gov. Ex. 459 is a letter which I received from Dr. Neill in reply and it is dated Mar. 22, 1938. Gov. Ex. 460 is a letter which I received from Dr. Neill dated April 11, 1938. Gov. Ex. 461 is a copy of my reply to Dr. Neill dated April 19, 1938. Gov. Ex. 458-461, inclusive, were offered in evidence.

In August of 1938 Dr. Halstead applied to a number of Washington hospitals for privileges.

R. T. Berry was Secretary of Group Health during this period. I know his signature. Gov. Ex. 462 bears Mr. Berry's signature.

Gov. Ex. 462 was offered in evidence. Defendants objected on the grounds of incompetency, immateriality, irrelevancy, no conspiracy had been proven, and hearsay, and that the letter contained opinions of the writer. Ruling reserved.

The Court thereupon considered Gov. Exs. 458, 459, 460 and 461. Defendants objected on the grounds that they were incompetent, immaterial, irrelevant, no conspiracy had been proven, and hearsay, and that Gov. Exs. 459 and 462 were self-serving, prejudicial statements of Group Health. Objections overruled and exception allowed, except that ruling upon Gov. Exs. 460, 461 and 462 were reserved.

Gov. Exs. 458 and 459 were received in evidence.

After several conferences, with counsel, concerning the question of whether prima facie the Washington Hospitals participated in the conspiracy, the Court ruled as follows:

The Court: As to this line of testimony offered by the Government which we have discussed, I have reached the



conclusion it should be received. We will go ahead with it.

Mr. Leahy: That will go in under our objection and exception?

The Court: That will go along under the general understanding as to your objection and exception, unless as to some particular item; except as to that, the whole line of testimony will be understood to be under your objection and exception.

The following exhibits heretofore received in evidence, were read to the jury as follows:

Gov. Ex. 458 is a letter from Mr. Kirkpatrick, President of Group Health, to the defendant, Thomas E. Neill, President of the District Medical Society, dated March 21, 1938:

"DEAR DR. NEILL:

A situation arose yesterday, March 20, in regard to a member of Group Health Association who is seriously ill with coronary thrombosis, which gives us the gravest concern for the welfare of 2500 members of our Association and their 3500 dependents. If the instructions you have reported to have issued to a distinguished physician in good standing with the Medical Society of the District of Columbia are correctly reported to us, your action not only discredits the medical profession as a whole but would violate every humane precept that has been the cornerstone of the practice of medicine since the time of Hippocrates.

The facts as reported to me in my official capacity as President of Group Health Association are these:

Dr. Richard H. Price, a member of the Group Health medical staff, has been attending a patient, a member of Group Health Association who has been suffering from a serious heart affliction known as coronary thrombosis. His condition reached such a serious stage yesterday that Dr. Price wished to call into consultation on the case a heart specialist of repute, who is a member of your Society. Dr. Price reports he was informed by this physician that he had been advised by you that he would not be permitted to enter into such a consultation. Dr. Price reports him as saying in effect that you had ruled no member of the Medical Society of the District of Columbia could consult with a physician on the staff of GHA; that he could not visit a member of ours or render any service in the presence



of a Group Health physician, regardless of the critical nature of the case; that any contact or 'consultation' between this physician and a staff physician of Group Health would have to be confined to formal notes or conversation on the telephone.

Dr. Price concurred with me that every concession should be made in order to obtain the services of this heart specialist for this patient and such arrangements were immediately concluded. Dr. Price informs me that the physician was both sympathetic and willing to give his services in any form consistent with the rules of the Medical Society of the District of Columbia. We appreciate his attitude and are happy to have obtained his services in view of the critical nature of the patient's illness.

I feel sure that a gross misunderstanding has taken place as it is inconceivable that you, as President of the District Society, would take such an autocratic stand in committing the medical profession to an inhumane policy. If true, your leadership of the Medical Society has not only barred GHA physicians from their right to administer to human needs in the hospitals of Washington but from their right and their duty to avail themselves of the benefits of consultation with other leaders of the Medical profession in administering to their patients.

It is vitally important that we have a clear understanding of your position in the matter immediately. I, therefore, await word from you.

Yours very truly, W. C. Kirkpatrick, President."

Gov. Ex. 459 is Dr. Neill's response to Mr. Kirkpatrick's letter, dated March 22, 1938, on the letterhead of The District Medical Society:

"MY DEAR MR. KIRKPATRICK:

I acknowledge your letter of March 21st in which you refer to the occasion when Dr. Richard H. Price, a member of the medical staff of the Group Health Association is said to have endeavored to enlist the services of a member of the Medical Society of the District of Columbia as a consultant in connection with the treatment of a member of your Association.

In view of the statements contained in your letter, and the wide publicity given to it in the public press, it is obvious that the primary purpose of your communication

is to create in the public mind an erroneous impression as to the attitude of the Medical Society of the District of Columbia and the members thereof in rendering medical aid to the community in general.

In order to have a proper appreciation of the questions involved it is first necessary to have a correct understanding of the facts. In the case referred to by you, it is my understanding that the services of the consultant in question were solicited by a member of the family of the patient because of the fact that on a prior occasion he had treated a member of the family of the patient for a like ailment. When it developed that the patient was being treated by Dr. Richard H. Price, a member of the staff of the Group Health Association, the consultant sought my advice as to whether it was permissible under the Constitution of the Society for him to enter into consultation with a member of your medical staff. Having in mind the Constitution of the Medical Society, which provides that:

'No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, which has not been approved by the Society.'

and considering the fact that the Group Health Association has not been approved by the Medical Society, I advised the consultant that under the provisions of the Constitution of the Society, he was not authorized to enter into consultation with Doctor Price.

I am advised that the consultant informed Doctor Price that while he could not see the patient in consultation, nevertheless, he would gladly see the patient independently and render whatever medical service might be needed. Agreeable to the wishes of the patient, the consultant called upon him, made a diagnosis and gave advice as to treatment, all of which was communicated to Doctor Price.

A frank and fair disclosure of the facts clearly indicates that the best interests of the patient were in every respect safeguarded, and in no wise did he suffer any detriment.

The Group Health Association is engaged in the practice of medicine in the District of Columbia in violation of the provisions of the Act of Congress known as the "Healing

Arts Practice Act," in force in this District, which is a comprehensive act for the government, regulation and control of the practice of medicine. Because of the fact that the Group Health Association is illegally engaged in the practice of medicine, it has not, and cannot, be approved by the Medical Society as a proper organization to engage in the practice of medicine in this District.

Notwithstanding the fact that the United States District Attorney has ruled that the Group Health Association is engaged in the practice of medicine in violation of law, nevertheless, it has persisted in the continuance of this illegal practice. The Constitution of the Medical Society is binding upon its members, and as President of the Society, I am obligated, when called upon, to advise the members of the Society that the provisions of its Constitution are mandatory and must be adhered to.

I have no discretion to suspend the provisions of the Constitution of the Society, and so long as the Group Health Association persists in the practice of medicine in violation of law, it is my bounden duty to advise the members of the Society that under its Constitution they are not authorized to enter into consultation with the hired agents of the Group Health Association.

In conclusion, I desire to emphasize that this does not mean that the members of the Group Health Association, or any other members of the community, will be deprived of proper medical attention. On the contrary, the members of the Medical Society stand ready at all times to render necessary and proper medical attention to all persons in the community, including the members of the Group Health Association.

Very truly yours, (Signed) Thos. E. Neill, M. D.,  
President, The Medical Society of the District of  
Columbia."

Gov. Ex. 322 is the Report of the Hospital Committee submitted November 11, 1937:

"In view of the resolution adopted by The Medical Society of the District of Columbia on the evening of November 3, 1937, The Hospital Committee held a meeting, at my office, on the evening of November 9, 1937, and recommends that The Medical Society of The District of Columbia send the following resolution to the Medical Boards

of the various, local hospitals for interpretation to the Boards of Directors of those hospitals:

"That the hospitals accept patients from Group Health Association, Inc., provided that Group Health Association, Inc., is responsible for their financial obligations; that these patients only be treated by the attending, associate, assistant and courtesy staff physicians of the respective local hospitals."

J. Ogle Warfield, Jr., Chairman, Hospital Committee."

At the bottom of Gov. Ex. 322, is a handwritten note as follows:

"The Med. Soc. of D. C. voted on November 11, 1937, to re-commit their report to the Hospital Committee for further consideration."

Gov. Ex. 323 is written on the letterhead of Dr. J. Ogle Warfield, Jr., and is headed "Report of the Hospital Committee, December 1, 1937":

"The Hospital Committee submits the following resolution:

Resolved that: As a matter of educational policy The Medical Society of D. C. strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of The American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of The Medical Society of D. C. or a local Medical Society in this immediate neighborhood and a member of the American Medical Association.

Mr. President, I move that this resolution be adopted and a copy of it be sent to each of the local hospitals.

J. Ogle Warfield, Jr., Chairman, Hospital Committee."

Gov. Ex. 83 is a letter from the defendant, C. B. Conklin, Secretary, District Medical Society, to Dr. J. Ogle Warfield, Jr., Chairman, Committee on Hospitals, The Medical Society of the District of Columbia, Washington, D. C., dated February 25, 1938:

"DEAR DOCTOR WARFIELD:

Pursuant to action of the Executive Committee, in session on the evening of February 21, 1938, the enclosed resolution, which was presented to the Society at the Business Meeting in February, was ordered referred to the Hospital Committee for consideration and report.

Very truly yours, C. B. Conklin, M. D., Secretary."

The Resolution enclosed in Gov. Ex. 83 is as follows:

"Resolution presented at the Business Meeting of the Medical Society of the District of Columbia, in session on February 2, 1938, by Dr. Thomas E. Mattingly; ordered referred to the Executive Committee for consideration and report.

That the proper agency of the Medical Society be instructed to present at our next stated meeting the facts relating to the present status of Group Health physicians at the various Washington hospitals preliminary to appropriate disciplinary action, in event any hospital has ignored the Medical Society's wishes in the premises."

Gov. Ex. 313 is a letter from the defendant, Dr. Warfield:

February 3, 1938.

"Dr. W. Warren Sager, 1835 Eye Street, N. W. Washington, D. C.

DEAR DR. SAGER:

I would appreciate your inquiring of your hospital which you represent on the Hospital Committee whether any action has been taken on the names or applications of physicians or surgeons connected with Group Health Association, Inc., also has your hospital recently revised its lists of courtesy and staff physicians and surgeons?

Sincerely, J. Ogle Warfield, Jr., Chairman—Hospital Committee."

Gov. Ex. 312 is headed "Committee on Hospitals" as follows:

"Committee on Hospitals

1937-38

(Garfield) CHAIRMAN: J. Ogle Warfield, Jr.

(Childrens)

1726 Eye Street, N. W.  
Washington, D. C.



Georgetown—Leon A. Martel, 1801 Eye Street, N. W. Na. 7200

Episcopal—Wm. H. Jenkins, The Connecticut Apts: Di. 3200.

Homeopathic—Gregg C. Birdsall, 1832 Kalorama Rd., N. W. Co. 3350.

Casualty—J. Rogers Young, 1400 M Street, N. W. Met. 2419.

Emergency—Wm. B. Marbury, 2238 Q Street, N. W. No. 8600.

Columbia—Jerome F. Crowley, The Connecticut Apts. Di. 3200.

Providence—J. P. Shearer, Farragut Medical Bldg. Di. 5870.

G. Washington—W. Warren Sager, 1835 Eye Street, N. W., Na. 7200.

John H. Trinder, 1746 K Street, N. W. Di. 4620.

Sibley—Jessie T. Mann, 1024 Mass. Ave., N. E. Li. 6440.

Counsel for Medical Society of D. C.—

Frederick A. Fenning, 940 Shoreham Building, Washington, D. C. Phone—National 1194

President of Medical Society of D. C.—

Dr. Thomas E. Neill, 1824 Mass. Ave., N. W. Phone—Decatur 1707 or

2810 35th Street, N. W.—Phone—Cleveland 0026.

(Mr. Kelleher: Gov. Exs. 314-321 are replies which Dr. Warfield received in response to letters sent to members of the Hospital Committee.)

Gov. Ex. 321, written on the letterhead of Earle G. Breeding, dated February 8, 1938, and addressed to Dr. John H. Trinder, The Parkwood, 1746 K Street, N. W., Washington, D. C.:

“DEAR DOCTOR:

Referring to the enclosed inquiry of Dr. Warfield, I wish to advise there have been no applications of physicians or surgeons connected with the Group Health Association, Inc., for the courtesy of the Episcopal Hospital to date.

The Hospital has recently revised its courtesy list and this list may be obtained by applying to the Superintendent of the Hospital if your committee requests it.

If any further information is required, I will be glad to give it to you or you may obtain same from the acting Superintendent.

Very sincerely, Earle G. Breeding, M. D."

Gov. Ex. 320 is a letter dated February 4, 1938 on the letterhead of Columbia Hospital for Women to Dr. J. Ogle Warfield, Jr., 1726 Eye Street, N. W., Washington, D. C.:

"MY DEAR DOCTOR WARFIELD:

Dr. Jerome F. Crowley has asked me if I would give you the information which you request in your letter to him dated February 3, and I take pleasure in doing so.

This hospital has not as yet taken any action on the application of any physician or surgeon connected with the Group Health Association.

This hospital has not recently revised its list of courtesy and staff physicians and surgeons.

Very truly yours, P. M. Ashburn; Superintendent."

Gov. Ex. 319 is a letter on the letterhead of the National Homeopathic Hospital, Washington, D. C., to Dr. J. Ogle Warfield, Jr., Chairman, Hospital Committee, 1726 Eye Street, N. W., Washington, D. C.:

"MY DEAR DR. WARFIELD:

In compliance with your request to Dr. Birdsall, I am enclosing copies of the two letters, one of which is being sent to every member of our Courtesy Staff of 1937.

I am also enclosing copy of a letter sent to Mr. Penniman under date of November 9, 1937.

I believe the letters are self-explanatory in showing that the hospital has recently revised its list of courtesy and staff physicians and surgeons, excluding those who are not members of an organized Medical Society.

Sincerely, Frances Whitlock Hall, Superintendent."

Gov. Ex. 318 is one of the letters enclosed in Gov. Ex. 319, dated March 18, 1938, on the letterhead of the National Homeopathic Hospital, Washington, D. C.

"The Trustees of the National Homeopathic Hospital are revising the Courtesy Staff for 1938. We wish to add your name to the Staff but find that the Medical Society

of the District of Columbia does not list your name among its members.

The rules of the Hospital governing staff members requires membership in a local medical society of the District of Columbia, nearby Maryland, or Virginia.

Will you kindly advise me if you belong to any of the medical societies, at your earliest convenience.

Yours very truly,"

Mr. Leahy: To whom is that letter addressed?

Mr. Lewin: It is addressed to every member of the courtesy staff of Homeopathic; it is the communication referred to in the other exhibit.

Mr. Leahy: Is it addressed to anyone?

Mr. Kelleher: No, nothing on the top.

Mr. Lewin: It is enclosed in this letter which Mr. Kelleher just read.

Gov. E 317 is a letter dated March 18, 1938, on the letterhead of the National Homeopathic Hospital to the defendant, Dr. J. Ogle Warfield, Chairman of the American Medical Association Committee, 1726 Eye Street, N. W., Washington, D. C.

"DEAR DR. WARFIELD:

I am enclosing you herewith for your files, copy of letter written to each member of our Courtesy Staff, and also a copy of letter that has been written to those who we found were on the list, but were not members of any medical association.

Yours very truly, Fred McKee, President, Board of Trustees."

Gov. Ex. 316 is a handwritten letter from G. C. Birdsall, M. D., 1832 Kalorama Road, Washington, D. C., dated February 10, 1938:

"DEAR DOCTOR:

The National Homeo. Hospital met all requirements when appointing staff and courtesy staff. I asked the superin-

tendent to mail you copies of the letters which were mailed out. All members were required to be affiliated with organized medical society either in the District or surrounding adjacent counties. A few of the younger men were given to May to affiliate themselves with their medical society before their applications could be accepted.

Very truly, G. C. Birdsall."

Gov. Ex. 315 is a letter from Dr. Marbury to the defendant, Dr. J. Ogle Warfield, Jr., 1726 Eye Street, N. W., Washington, D. C., dated February 9, 1938:

"DEAR DR. WARFIELD:

I have your letter of February 3rd. I have inquired at Emergency Hospital whether or not there has been any change in the situation in regard to the Group Health Association, and also whether there has been any revision of the courtesy list and staff appointments. Apparently the hospital has not taken any new action in regard to physicians of the Group Health Association, Inc. They cannot treat patients at Emergency Hospital because they do not belong to the D. C. Medical Society.

The notices in regard to the courtesy list and staff physicians goes out in April. There have been no recent changes in any of these appointments. I hope this gives you the information desired.

Very sincerely yours, Wm. B. Marbury."

Gov. Ex. 314 is a letter from the defendant, J. Rogers Young, to the defendant, J. Ogle Warfield, Jr., dated February 9, 1938:

"DEAR DR. WARFIELD:

In response to your inquiry of February 3, I wish to inform you that the Eastern Dispensary and Casualty Hospital is at this time revising its lists of courtesy and staff physicians and surgeons. To date we have had no application from any physician or surgeon connected with the Group Health Association.

If there is any further information I can give you regarding this matter, I shall be glad to cooperate with you in any way.

Very truly yours, J. Rogers Young."

Gov. Ex. 296 is a Questionnaire filled out and returned by the National Homeopathic Hospital:

**"Questionnaire**

1. What communication has your hospital had from Group Health Association, Inc.?

Answer (in pen handwriting). Received circular letter dated November 8th.

2. What reply has your hospital made to Group Health Association, Inc.?

No action would be taken until Group Health Assoc. was approved by D. C. Med. Soc.

3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

Dr. Henry Rolf Brown. No.

Dr. Allan E. Lee. Yes.

Dr. Mario Scandiffio. Yes.

Dr. R. Stephen Hulburt. No.

Dr. Raymond E. Selders. No.

Dr. Edmond B. Wells. No."

In handwriting is the following note:

"Courtesy staff: Lee, obstetrics; Scandiffio, pediatrics; both have had patients in hospital formerly. Further action regarding them awaits the action taken by D. C. Medical Society."

Next question:

4. Is your hospital in sympathy with the policies of The Medical Society of D. C.?

Yes—100%.

5. Is the entire Medical Staff of your hospital reappointed annually?

Yes.

6. Are appointments to the Medical Staff of your hospital approved by the Medical Staff?

Yes.

7. What governing body of your hospital finally makes appointments to the Medical Staff?

Board of Trustees.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?



Yes—Required since Jan. 1, 1937.

9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

100%—not all of courtesy staff.

10. Does your hospital require membership in the A.M.A. as a qualification for appointment to its Medical Staff?

Only through membership in D. C. Med. Soc.

11. What percentage of the entire Medical Staff of your hospital are members of the A.M.A.?

100%.

12. Is your hospital a beneficiary of Community Chest funds?

Yes.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?

The Hospital wants to co-operate with D. C. Med. Soc.—Would like advice about course to pursue regarding applications from patients holding Group Health Assoc. Also regarding consultations in such cases.

Frances Whitlock Hall, Superintendent. G. C. Birdsall, For Hospital Committee."

Gov. Ex. 311 is a handwritten memorandum from the defendant, Dr. Warfield. At the top of one column is the word "Doctors"; at the top of the other is "Require membership in D. C. Medical Society", and listed on the left-hand column are the names of the Washington, D. C. hospitals:

"Georgetown—Doctor. None.

Require membership in D. C. Medical Society. Yes.

Episcopal—Doctor. None."

There is no answer to the question in the second column.

"Homeopathic." The name Scandiffio is stricken out and also the zero is stricken, in pen.

"Require membership in D. C. Medical Society. Yes."

The next is:

"Casualty—Doctor. None.

Require membership in D. C. Medical Society.

Qualified for membership in local Society.

Emergency—Doctor. None.

Require membership in D. C. Medical Society. Yes.

Columbia—Doctor. None.

Require membership in D. C. Medical Society. No.

Providence—Doctor. None.

Require membership in D. C. Medical Society. Yes.

George Washington—Doctor. None.

Require membership in D. C. Medical Society. No.

Sibley—Doctor. Scandiffio.

Require membership in D. C. Medical Society. No.

Garfield—Doctor. None.

Require membership in D. C. Medical Society. Yes.

Childrens—Doctor. None.

Require membership in D. C. Medical Society. Yes."

Gov. Ex. 324 was offered and read to the jury only against the defendant Warfield, as follows:

"Report of the Hospital Committee submitted to the Executive Committee of the Medical Society of the District of Columbia on March 28, 1938, and to Medical Society 4/6/38.

The Hospital Committee has purposely avoided the submission of a list of local hospitals for approval of the Medical Society. The eleven local hospitals therefore remain approved by the Medical Society as of November 4, 1936. To have attempted to re-approve these hospitals last fall or this winter would have detrimentally created conflicts between the Medical Society and some of the local hospitals because of attempted enforcement of the provisions of Chapter IX, Article IV, Section five of the Constitution of the Medical Society."

Mr. Kelleher: The first sentence of the second paragraph, or a portion thereof, is stricken, and inserted in handwriting of defendant Warfield are certain words. I will first read the sentence as it was originally and then the sentence as changed by Dr. Warfield.

"In an effort to hinder the operation of Group Health Association, Inc. in the local private hospitals, the Medical Society adopted a resolution on November 3, 1937."

The sentence as changed reads as follows:

"In an effort to maintain the high standards of practice in the local private hospitals, the Medical Society adopted a resolution on November 3, 1937 directing the Hospital Committee to recommend the best way of bringing the questions involved to the attention of the Medical boards and boards of directors of the various local hospitals to insure the maximum amount of accomplishment with the minimum amount of friction and conflict. On December 1, 1937 the Hospital Committee submitted a resolution, which was adopted, that the Medical Society recommend to the hospitals that they follow the recommendation of the American Medical Association, namely, that each hospital appointee be a member of his or her local medical society and a member of the American Medical Association.

On February 2, 1938 the Medical Society adopted a resolution requesting, at the next stated meeting, the facts relating to the present status of Group Health physicians at the various Washington hospitals."

And the rest of the sentence is stricken. It reads as follows:

"preliminary to appropriate disciplinary action in event any hospital had ignored the Medical Society's wishes in the premises."

Mr. Kelleher: The report then continues:

"This resolution was referred to the Executive Committee and in turn to the Hospital Committee.

The Hospital Committee reports that, at this time, the majority of local private hospitals contain in their by-laws a provision that a physician in order to practice in the hospital must be a member or qualified for membership in his or her local Medical Society.

Only three of the local hospitals, (Columbia, Sibley and George Washington) have not followed this recommendation of the American Medical Association.

All of the local private hospitals are cooperating fully with the Medical Society in respect to Group Health Association, Inc. At the present time only one of the local hospitals has on its staff list the name of a physician connected with Group Health Association, Inc. This hospital does not revise its staff list annually, as do the other hos-

pitals, but it has assured the Chairman of the Hospital Committee that steps have been taken to deny this physician hospital privileges.

The Hospital Committee urges that the Medical Society continue their full cooperation and avoid conflict with any of the local private hospitals.

J. Ogil Warfield, Jr., Chairman, Hospital Committee."

Gov. Ex. 325 is the transcript of the proceedings of the first session of the case before the executive committee of the Medical Society of the District of Columbia entitled "Compensation, Contract and Industrial Medicine Committee of the District of Columbia Medical Society, Complainant, v. Allen E. Lee and Mario Scandiffio, defendants, at the session held Monday, December 5, 1937, in the hearing room of the Medical Society. Excerpts from Government Exhibit 325 were read as follows:

"The above-entitled matter came on for hearing before the Executive Committee of the Medical Society of the District of Columbia, pursuant to notice, at 8 o'clock p. m.

Present: E. Hiram Reede (Chairman), John A. Reed, Henry B. Schreiber, Raymond T. Holden, Jr., William T. Gill, Jr., Thomas E. Neill, C. N. Chipman, William M. Sprigg, F. X. McGovern, H. C. Macatee, Sterling Ruffin, C. B. Conklin, and R. Arthur Hooe."

Gov. Ex. 326 is the transcript of the proceedings of the second session of the case on December 10, 1937, in the hearing room of the District Medical Society.

An excerpt from Gov. Ex. 326 was read to the jury as follows:

"The hearing in the above-entitled matter before the Executive Committee of the Medical Society of the District of Columbia was resumed, pursuant to the adjournment, at 8 p. m.

Present: E. Hiram Reede (Chairman), Raymond T. Holden, Jr., F. X. McGovern, Daniel L. Borden, Henry B. Schreiber, William M. Sprigg, Henry C. Macatee, R. Arthur Hooe, C. N. Chipman, John A. Reed, R. Lomax Wells, Earle G. Breeding, and C. B. Conklin."

Gov. Ex. 327 is the transcript of the proceedings of the third session of the case, held in the hearing room of the



District Medical Society on December 16, 1937. Excerpt from Gov. Ex. 327 was read to the jury as follows:

"The hearing in the above-entitled matter before the Executive Committee of the Medical Society of the District of Columbia was resumed, pursuant to the adjournment, at 8 o'clock p. m.

Present: E. Hiram Reede (Chairman), Daniel L. Borden, C. N. Chipman, C. B. Conklin, H. A. Fowler, R. T. Holden, Jr., R. Arthur Hooe, H. C. Macatee, F. X. McGovern, Thomas E. Neill, John A. Reed, and Sterling Ruffin."

Gov. Ex. 328 is the transcript of the proceedings of the fourth session of the case, held in the hearing room of the District Medical Society on December 20, 1937. Excerpt from Gov. Ex. 328 was read to the jury as follows:

"The above-entitled matter came on for further hearing before the Executive Committee of the Medical Society of the District of Columbia pursuant to adjournment, at 8 o'clock p. m.

Present: E. Hiram Reede (Chairman), Daniel L. Borden, C. N. Chipman, C. B. Conklin, H. A. Fowler, R. T. Holden, Jr., R. Arthur Hooe, F. X. McGovern, Thomas E. Neill, John A. Reed, Sterling Ruffin, and W. M. Sprigg."

Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the stated meeting of the Medical Society of the District of Columbia, held Wednesday, March 2, 1937. (Excerpt)

Dr. Daniel B. Moffett, First Vice President, presiding.

Present: Drs. Edgar M. McPeak, James A. Cannon, A. L. Stavely, Luther H. Reichelderfer, William J. Mallory, Don Johnston, Thomas C. Thompson, R. Arthur Hooe, Jerome F. Crowley, Henry A. Montat, Harry A. Spiegel, Victor B. Rensch, J. Lawn Thompson, A. Frances Foye, William Gerry Morgan, H. C. Macatee, Arch L. Riddick, John H. Trinder, Oscar B. Hunter, Thomas E. Mattingly, W. C. Gwynn, and other members to the number of about 150.

The Minutes of the preceding meeting, held February 23, were read and approved.

• • • Dr. Sprigg read from the agenda the notice sent to all members as follows:



### Notice to all members:

You are hereby notified that pursuant to Chapter X, Article II, of the Constitution of the Society, the report, finding and recommendation of the Executive Committee upon the charges made in writing under date of November 22, 1937, by the Compensation, Contract and Industrial Medicine Committee against Mario Scandifio, M. D., member of the Society, specifically charging him with having violated Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society, will be submitted at a meeting of the Society to be held Wednesday, March 2, 1938, at 8 P. M., in the Medical Society Building, for appropriate action by the Society pursuant to its Constitution.

Dr. Sprigg, in continuing, read the following report, finding and recommendation of the Executive Committee:

Washington, D. C., February 21, 1938.

The Medical Society of the District of Columbia.

In the matter of Mario Scandifio, M. D.

Whereas, the Compensation, Contract and Industrial Medicine Committee, by its Chairman, R. Arthur Hooe, M. D., under date of November 22, 1937, did submit in writing to the Executive Committee charges against Mario Scandifio, M. D., a member of the Medical Society of the District of Columbia, specifically charging him with having violated Chapter IX, Article III, Section 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society.

And Whereas, after due notice to the said Mario Scandifio, M. D., the Executive Committee did hold hearings at which the said Mario Scandifio, M. D., with his counsel, did appear, did testify in his own behalf, did produce witnesses in his defense, and was accorded full and fair hearing in response to said charges; the said charges were fully and impartially investigated, and at the conclusion of the said hearings, arguments, both oral and written, were submitted by counsel for said Mario Scandifio, M. D.

Thereafter, all of the evidence adduced at the said hearings was duly considered by the Executive Committee, and upon consideration thereof, the said Executive Committee, by more than a two thirds vote, finds the said Mario Scandifio, M. D.,

diffio, M. D., guilty of violating Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Medical Society of the District of Columbia, as charged by the Compensation, Contract and Industrial Medicine Committee, and recommends that he be expelled from said Society.

And it is further ordered, that the report, findings and recommendation of the Executive Committee be submitted in writing to the Medical Society of the District of Columbia at its next regular business meeting for such action as may be deemed proper pursuant to its Constitution.

(Signed.) Wm. Mercer Sprigg, Chairman, Executive Committee.

Dr. Sprigg made a motion to the effect that the report of the Executive Committee be received and that the matter of the recommendation be brought up for action by the Society at the meeting to be held on March 16, 1938. Seconded, and finally unanimously adopted.

Dr. R. Arthur Hooe was recognized. He stated that from time to time he and members of the Compensation, Contract and Industrial Medicine Committee, have been approached by members of the Society, stating that Dr. So-and-So is doing refraction work, performing surgical operations, or doing eye, ear and throat work for Group Health Clinic. The question is invariably asked of the committee as to what it intends to do about it. Dr. Hooe said he, upon further inquiry of the member of the Society, is told that his information is all hearsay. Dr. Hooe urged the members to get facts and not hearsay evidence, as hearsay evidence was of no value."

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"Minutes of the Meeting of the Medical Society of the District of Columbia, Held March 16, 1938. (Excerpt)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. William J. Mallory, John D. Thomas, John B. Nichols, Henry B. Gwynn, John H. Trinder, Prentiss Willson, E. Hiram Reede, H. H. Schoenfeld, E. J. Cuning, H. S. Bernton, F. X. McGovern, Thomas E. Mattingly, Grant S. Barnhart, George R. Tribble, Worth B. Daniels, Alma Jane Speer, Edmund M. Ellerson, Marvin M. McLean,

Frank L. Williman, J. A. Murphy, and other members to the number of about 175.

The Minutes of the preceding meetings held March 2 and March 9 were read and approved. One correction was suggested by Dr. J. H. Trinder, who stated that he did not make the motion concerning Dr. Hall's application. The minutes were approved with correction.

The Chairman of the Executive Committee was called on for report.

Dr. W. M. Sprigg pointed out that the recommendations of the Executive Committee were presented to the Society on March 2, 1938, are in the hands of the Secretary and they now belong to the Society.

The Chair stated that the business to be taken up tonight had no legal aspects whatsoever. It is a question of the Society following the Constitution and By-laws. Further, that all the newspaper notoriety did not mean a thing and had nothing to do with what the Society decides to do.

The Chair declared the question before the house was the dismissal of Dr. Mario Scandifio as a member of the Society.

In the discussion, Dr. Sprigg pointed out that the report, findings and recommendation of the Executive Committee were read by the Secretary in the minutes of March 2. He thought someone might want to have them re-read.

Motion was made that the recommendation of the Executive Committee be accepted. Seconded.

A member of the Society would inquire who Dr. Scandifio is and whether or not he should be here tonight to be given a proper hearing. It would seem to him to be most improper to act on this matter without the gentleman being present.

Dr. Sprigg would call the attention of those present to the provisions of the Constitution of the Society. He would suggest that the member familiarize himself with the Constitution. He pointed out that Dr. Scandifio had had a hearing before the Executive Committee, represented by his counsel, which hearings lasted over a period of 4 or 5 weeks. Dr. Sprigg felt the member opposing action tonight was out of order.

Dr. F. J. Gunning thought the gentleman was perfectly proper in questioning the procedure, and agreed that Dr. Scandifio should be present tonight. He referred to his

own case, some years ago, when he was exposed to some controversy over the provisions in the Constitution. He was of the opinion that the Constitution of the Society gives the member no rights.

Dr. J. Lawn Thompson rose to a point of order, stating that the doctor was not speaking to the question before the house.

Motion was made that discussions be limited to two minutes each, except by vote of the Society. Seconded and adopted.

Dr. H. H. Schoenfeld was of the opinion that the original question was not completely answered. He stated that the fact was that Dr. Scandiffo had knowledge of this meeting tonight, had received notice of the business to be considered, had the right and privilege of appearing and appealing directly to the Society if he so desired. In view of the fact that he has not taken advantage of that opportunity it was his opinion that the Society could proceed with the consideration of the subject.

Dr. Thomas E. Mattingly was recognized. He said it might seem as though he was contradicting himself because only a few nights ago he had presented certain resolutions for consideration of the Society concerning patients of Group Health Association, Inc., being admitted to hospitals, but he would make a recommendation that Dr. Scandiffo be suspended from membership. Dr. Mattingly called attention to a radio broadcast today which told what was going to happen in the event the Society expelled the Doctor in question; also there appeared in the Star, News and Times newspaper write-ups concerning the case, in other words, before the Society had taken a vote the case was tried in the newspapers.

The Chair stated that the question before the house was the dismissal of Dr. Mario Scandiffo for violation of Chapter IX, Article III, Sections 1 and 2, and Chapter IX, Article IV, Section 5, of the Constitution of the Society. Vote was taken, and the motion was adopted by a vote of 148 to 5.

The Chair, therefore, declared that Dr. Mario Scandiffo was no longer a member of the Society."

Gov. Ex. 147, a copy of a letter from Dr. Olin West to Dr. George Edward Follansbee, dated April 21, 1938, was read to the jury as follows:

“DEAR DOCTOR FOLLANSBEE:

I am enclosing a telegram received this morning from Dr. A. T. Talley, Chairman of the Board of Censors, Harris County Medical Society, Houston, Texas. Doctor Talley has been informed that this telegram has been referred to you as Chairman of the Judicial Council.

As I understand the matter, Dr. Raymond E. Selders, a member of the Harris County Medical Society, accepted a position with the Group Health Association, Inc., in Washington, D. C., a corporation now engaged in the practice of medicine in the District of Columbia. You may recall that this corporation was financed by the Home Loan Bank Board through the Home Owners Loan Corporation and that this action was rather severely criticized by an official committee of Congress.

We were definitely informed that the United States District Attorney for the District of Columbia has ruled that the Home Loan Bank Board had no legal authority for providing funds for the support of the Group Health Association, Inc., that official rulings have been issued by duly constituted authorities in Washington to the effect that corporations cannot legally engage in the practice of medicine, and that the Group Health Association, Inc., is operating in violation of the insurance laws of the District of Columbia.

The Medical Society of the District of Columbia has, as I understand it, expelled one member who accepted employment with the Group Health Association, Inc., and this action has created a great storm in Washington, which has been widely and persistently heralded in the local press. As stated in Doctor Talley's telegram, charges have been preferred against Doctor Selders, a member of the Harris County Medical Society, and apparently the board of censors of that society is undecided as to what should be done. It seems to me that the first thing the board of censors should do is to take the matter up with the council of the State Medical Association of Texas, but apparently the members of the board of censors feel that, as Doctor Selders is acting as an agent of the Group Health Association, Inc., outside of Texas, the matter is one for determination by the Judicial Council of the American Medical Association.

Very sincerely yours, Dr. West.”



Gov. Ex. 37 was read from to the jury as follows:

"Minutes of the regular meeting of the Executive Committee of the District Medical Society, March 28, 1938. (Excerpt.)"

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. S. A. Alexander, C. N. Chipman, William T. Gill, Jr., A. C. Gray, Raymond T. Holden, Thomas E. Neill, John A. Reed, E. Hiram Reede, Joseph E. Wall, C. B. Conklin, R. Arthur Hooe, and F. X. McGovern.

The minutes of the preceding meeting, held March 21, 1938, were read.

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, made a report relative to the first resolution that had been proposed by Dr. Thomas E. Mattingly, namely: "

Mr. Lewin: I am a little bit in a quandary as to what to do about this. This is offered as to all the defendants against whom there is a prima facie case. It is identical with the exhibit already shown to the jury, with the exception of the changes in ink. Do you think I had better read it? I want to be fair.

Mr. Richardson: It has just been read five minutes ago.

Mr. Leahy: It is all right to read it.

Mr. Kelleher: Mr. Leahy wants it read.

The Court: There is no point in taking the time unless it will serve some purpose.

Mr. Kelleher: Mr. Leahy wants it read.

Mr. Lewin: I will read it.

The report of Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, heretofore read in evidence, was re-read to the jury.

"Relative to Resolution No. 2 offered by Dr. Thomas E. Mattingly, as follows:

"That the proper agency of the Society take immediate measures to ascertain if any member or members of the Society are party to secret understandings and unethical arrangements with Group Health Association, Inc., whereby Group Health patients are admitted to Washington hospitals and treated under the service or supervision of Medical Society members possessing hospital privileges."

Dr. Hooe, reporting for the Compensation, Contract and Industrial Medicine Committee, to which the resolution had

been referred, stated that he considered the resolution to be ambiguous and further that he did not believe it was in the province of his committee to make investigations or report except upon authentic information received from members.

A motion was made, which was seconded, to lay this whole matter on the table. Adopted.

Dr. Hooe, in continuing, stated that a member came to him and stated that he had received a check for \$16 from Group Health Association. He asked Dr. Hooe whether he should accept it. This was but one of many similar cases. Dr. Hooe, after deliberating, informed the member that it was all right for him to take the \$16 check and have it cashed in view of there being nothing to indicate that the doctor had been in consultation with Group Health Association employees and that the patient was to all intents and purposes a private case, although paid for by the Group Health Association.

A member present stated that the Group Health Association had claimed to have paid over \$3,000 in checks in this way."

Those minutes are signed by C. B. Conklin, Secretary.

"Minutes of the Special Meeting of the Executive Committee of the District Medical Society, March 29, 1938. (Excerpt.)"

Dr. William Mercer Sprigg, Chairman, presiding.

Present: Drs. A. B. Bennett, Daniel L. Borden, C. N. Chipman, Harry A. Fowler, William T. Gill, Jr., Raymond T. Holden, R. Arthur Hooe, H. C. Macatee, F. X. McGovern, J. P. H. Mercer, Thomas E. Neill, John A. Reed, H. R. Schreiber, Joseph S. Wall, R. Lomax Wells, C. B. Conklin. In addition there were present Drs. J. Russell Verbrycke, Jr., Mr. Charles S. Baker, and Mr. F. A. Fenning, by invitation.

The Chair stated that should anyone like to hear a re-reading of the minutes of the meeting held March 21, 1938, the minutes would be re-read. No one seemed to wish this done. The minutes were not re-read.

Mr. Fenning was recognized. He stated that the Group Health Association, among other things had a drug store where, he was informed, prices were about one-third that of Peoples Drug Stores.

It was thought by many present that if Peoples Drug Stores authorities, Mr. Gibbs in particular, were notified some action might be taken.

Dr. H. A. Fowler stated that he was sure that he could make contact with Mr. Gibbs and that he could have some influence with him."

Minutes are signed "C. B. Conklin, Secretary."

"Minutes of the business meeting of the Medical Society of April 6, 1938. (Excerpt.)

Dr. Thomas E. Neill, President, presiding.

Present: Drs. A. L. Stavelly, James M. Moser, Charles W. Hyde, James A. Gannon, C. N. Chipman, Thomas E. Mattingly, J. Ogle Warfield, Jr., J. Lawn Thompson, Frank D. Costenbader, Charles S. White, Jerome F. Crowley, Marvin M. McLean, Charles P. Cake, J. Russell Verbrycke, Jr., Lyle M. Mason, Earl R. Templeton, V. R. Alfaro, Sterling Ruffin, William P. Herbst, Jr., John H. Trinder, John A. Reed, and other members to the number of about 85.

The Chair appointed Dr. E. Hiram Reede to act as Secretary in the absence of Dr. C. B. Conklin, who was attending a convention in New York City.

The minutes of the preceding meetings of the Society, held March 23 and March 30, were read and approved.

Dr. John H. Trinder made a motion that the Society go into executive session and that Dr. W. C. Woodward and the Public Relations Counsel, Mr. Fulton Lewis, Jr., be allowed to remain. Seconded and adopted.

The Chair appointed Dr. Benjamin F. Dean to act as Sergeant-at-Arms.

Dr. J. Ogle Warfield, Jr., Chairman of the Hospital Committee, read the following report:"

Mr. Lewin: I will not read that again, your Honor. That is the same report, this time being made to the Medical Society. I read the one made to the Executive Committee (reading further):

"Upon motion, duly seconded, the report of the Hospital Committee was adopted."

The minutes are signed by C. B. Conklin, Secretary, and D. E. Everett, underneath.

Mr. Leahy: Will you read from the bottom of page 6 and at the top of page 7? It is only about 7 or 8 lines, right after "Upon motion, duly seconded, the report of the Hospital Committee was adopted."

Mr. Lewin (reading):

"Dr. Marvin M. McLean would inquire if there was not a provision in the Constitution which requires the Hospital Committee to annually approve the various hospitals.

The President stated that there was no such thing in the Constitution.

Dr. Sprigg expressed the opinion that it should be clear that the hospitals have a perfect right to decide who should practice in their institutions. The courtesy staff has to be revised every year. One of the hospitals has had members of the profession on its staff for years even though they have not been members of the Society."

MARY G. THORNHILL, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have been employed by Dr. Warren Sager as a technician for ten years. I am familiar with his signature. I act for him in a secretarial capacity. The signature at the bottom of Gov. Ex. 313 is Dr. Sager's; the signature on Gov. Ex. 306 is Dr. Sager's.

The handwritten notation at the bottom of Gov. Ex. 313; Gov. Exs. 305 and 306; Gov. Ex. 440-A, on the basis of a comparison of a signature on Gov. Ex. 238, were offered in evidence. Gov. Ex. 441-A, on the basis of a comparison of a signature thereon with that on Gov. Ex. 11; and Gov. Ex. 442-A, were offered in evidence.

The defendants objected on the ground of incompetency, irrelevancy, and immateriality, and that the documents were hearsay, as no conspiracy had been proven. These objections were overruled and exception noted.

The notations on the bottom of Gov. Ex. 313 and Gov. Exs. 305, 306, 440-A, 441-A, and 442-A were received in evidence.

Notation on bottom of Gov. Ex. 313 was read to the jury as follows:

"The surgeon for HOLC has been rejected. No other application has been received.

Dr. Warren Sager."

Gov. Exs. 305 and 306 (two pages of one document, constituting a questionnaire) were read to the jury as follows:

Questionnaire—George Washington University Hospital

1. What communication or inquiry has your hospital had from Group Health Association, Inc.?

Request for hospital privileges for Dr. Selders.

2. What reply has your hospital made to Group Health Association, Inc.?

Application has been referred to the Staff and the Committee on Hospital Privileges for action.

3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

Dr. Henry Rolf Brown,

Dr. Allen E. Lee,

Dr. Mario Scandiffio,

Dr. R. Stephen Hulburt,

Dr. Raymond E. Selders,

Dr. Edmond D. Wells.

None.

4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

Yes.

5. Is the entire medical staff of your hospital reappointed annually?

Yes.

6. Are appointments to the medical staff of your hospital approved by the Medical Staff?

Yes.

7. What governing body of your hospital finally makes appointments to the medical staff?

Medical Staff.

8. Does your hospital require membership in the Medical Soc. of D. C.?

No.



9. Does your hospital require membership in the Medical Soc. of D. C. as a qualification for appointment to its medical staff?

No.

10. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

289 members of D. C. Med. Society; 33 not members.

10. Does your hospital require membership in the AMA as a qualification for appointment to its medical staff?

No.

11. What percentage of the entire medical staff of your hospital are members of the AMA?

12. Is your hospital a beneficiary of Community Chest funds?

Yes.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?

W. Warren Sager."

DR. FREDERICK C. FISHBACK, a witness for the United States.

Direct examination.

By Mr. Kelleher:.

I am a doctor. From April, 1936, to April, 1937, I was secretary of the Washington Academy of Surgery. I was acting secretary in December, 1937.

Gov. Ex. 443-A looks like a roster of the charter members of the Academy in 1934, through 1938 and 1940. During the period I was secretary, the following were members of the Academy:

Dr. Walter Atkinson, Dr. Garnett Ault, Dr. J. B. Bogan, Dr. Daniel Borden, Dr. Crenshaw Briggs, Dr. E. A. Cafritz, Dr. James Cahill, Dr. William W. Chase, Dr. J. Lloyd Collins, Dr. Edgar W. Davis, Dr. Harry Davis, Dr. Benjamin Dean, myself, Dr. Harry Fowler, Dr. Oscar Fulcher, Dr. J. A. Gannon, Dr. Frank Hagner, Dr. Custis Lee Hall, Dr. Ralph J. Haws, Dr. Valentine Hess, Dr. Edmund Morgan,

Dr. Alec Horwitz, Dr. E. L. Howes, Dr. Tom Kelly was a member but was apparently dropped, Dr. Harry H. Kerr, Dr. J. Kreiselman, Dr. G. W. Leadbetter, Dr. John H. Lyons, Dr. William Marbury, Dr. Francis McGovern, Dr. Robert E. Moran, Dr. R. W. Morris, Dr. J. S. Neviasser, Dr. G. K. Nutting, Dr. Paul Putski, Dr. F. A. Reuter, Dr. A. L. Riddick, Dr. Warren Sager, Dr. Fred Sanderson, Dr. H. H. Schoenfeld, Dr. J. B. Shearer, Dr. J. J. Shugrue, Dr. John Talbot, Dr. Lewis Taylor, Dr. G. Tully Vaughan, Dr. J. Ogle Warfield, also a defendant, Dr. Otto Warner, Dr. James W. Watts, Dr. W. Webb, Dr. Charles Stanley White."

As secretary I wrote up the minutes of the meetings of the Academy. I signed Gov. Ex. 444-A, the minutes of the Academy's meeting of September 10, 1937. Gov. Ex. 445-A is a carbon of a letter I wrote to the superintendent of George Washington University Hospital on December 8, 1937. Gov. Ex. 446-A is a carbon of a letter I wrote on December 9, 1937, addressed to "Dear John", meaning Dr. John Lyons, a member of the Committee on Hospital Privileges. Gov. Ex. 447-A is a carbon of a letter I think I wrote to Colonel Ashburn, Columbia Hospital. Gov. Ex. 448-A is a copy of a letter I think I wrote to Providence Hospital. Gov. Ex. 449-A is a carbon of a letter I think I wrote to Dr. Hooe. Gov. Ex. 450-A is a carbon of a letter I think I wrote to the superintendent of Garfield Hospital.

#### Cross-examination.

By Mr. Leahy:

I am still a member of the Academy but no longer secretary. The Washington Academy of Surgery is a scientific society made up of men here in Washington doing general surgery and meets four times a year. My duties, as secretary, were to record the minutes of the meetings, get out notices of the meetings, take care of three dinner meetings and the fourth meeting was just a scientific meeting. I am not a stenographer and in taking the minutes I jotted down the substance of what I thought occurred. The minutes were submitted for approval at the next meeting, although they frequently were not read. There were from 42 to 44 members in 1937 and 1938. The prime purpose and object of the meetings were to discuss various scientific papers. As secretary of the Academy I had sent to me applications from

various men wishing privileges in surgery. Those which had to do with general surgery, in contrast with gynecology or orthopedic surgery, were sent to the Credentials Committee as an advisory committee. I would send the applications to Dr. Lyons, and eventually they would come back, and then I would write a letter of transmittal to the superintendent of the hospital. I was not a member of the Credentials Committee.

The notes I took of the meeting of December 10 were probably transcribed the next day, when I actually typed them. The subject matters contained in Gov. Exs. 447-A, 448-A, 449-A, and 450-A did not come to my personal consideration for decision, and in sending out the letter I was merely a transmitting officer, and that was all. I think there are other records back of these letters in the possession of the hospitals and some in our files.

Gov. Exs. 447-A, 448-A, 449-A, 450-A, 445-A, 446-A, and 444-A were thereupon offered in evidence. Objection was made on the ground of incompetency, irrelevancy, and immateriality, and that the letters were hearsay as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Exs. 444-A-450-A, inclusive, were received in evidence.

JOSEPH E. RANDALL, a witness for the United States.

Direct examination.

By Mr. Lewin;

I am a member of the board of National Homeopathic Hospital. I was president of the hospital in 1936 and through 1937. The hospital is 55 years old, and does a general hospital business. It has beds to take care of 70 patients. It is managed by a board of directors. Dr. J. B. Gregg Custis has been chief of the medical staff for some time, and was in that office in 1937 and 1938, and was also a member of the board of trustees. The only active members of the staff of the hospital in 1937 and 1938 that I know are Drs. Custis, Davidson, Sappington, Shearer, Czigas, Warner, Swornstedt, Birdsall, Leadbetter, Cox, and Dr. Roger O'Donnell.

The accounts of National Homeopathic were audited by the firm of Ball, Blum & Company. Gov. Ex. 452 looks like their report.

I attended a large meeting at the Mayflower Hotel on October 30, 1937, where the Group Health project was discussed. After that meeting I talked with Mr. Penniman, president of Group Health. At the time of this conversation I was desirous of getting Group Health patients in our hospital. I expressed this desire to Mr. Penniman. I told Mr. Penniman we would like to have some of his business at National Homeopathic, as I thought they would have some patients needing hospitalization, and when the concern could pay cash we would be glad to have them at our regular prices. I visited the Group Health clinic on Eye Street and was shown through by Dr. Brown, the medical director, and it looked like a wonderful place.

I presided at a meeting of the board of trustees of the hospital on November 4, 1937. Dr. J. B. Gregg Custis was there. The matter was brought up of changing the requirements for members of our staff. Up to that time we required of members of our staff that they be a graduate of a recognized medical school, a member of a medical society, and have a couple of years' experience. Under that rule we did not require membership in any specific organization, and it may have been in any medical society, either home town or any place.

At this point the remainder of the testimony of the witness was limited against Dr. Custis.

Dr. Custis, without mentioning Group Health, brought up at the time a suggested change in our requirements. He said that the Society was going to or had made changes in their requirements and required all their doctors—the doctors of the local society—to be members of the boards of hospitals; to have on their staffs only members of the local society. He offered a resolution for a change in our requirements at that time, stating it was necessary that it be passed, otherwise most of the members of the staff would have to quit. That fall we made the change, the reason being that the majority of the board voted for it. I do not know what induced the board to change its rules.

The board of trustees of the hospital has a secretary, Mrs. Doris W. Thompson, and her duties are to keep a record of the meetings and send out notices to the different mem-



bers of the board; it was the usual course of business of the board to take down minutes. I recognize the signature of Mrs. Thompson to the minutes of the meeting of the Board of November 4, 1937, and they sound very much like the minutes of that meeting.

Gov. Ex. 453-A, being the minute book of the board of trustees of the National Homeopathic Hospital, showing the minutes of the meeting of November 4, 1937, was offered in evidence. Defendants objected on the grounds that they were incompetent, irrelevant, and immaterial and were hearsay, as no conspiracy had been proven. The objection was overruled and exception noted. Gov. Ex. 453-A was read from to the jury as follows:

"A meeting of the Board of Trustees of the National Homeopathic Hospital was held at the hospital at 12 noon, November 4, 1937.

Present—Colonel Randall, Presiding; Mrs. Dodge, Mrs. Zoller; Mr. Lauris McLaehlen; Mr. Brown; Dr. Custis; Mr. Doing; Mr. and Mrs. Ross Thompson. . . .

Colonel Randall told of having attended a meeting to discuss a proposed clinic for the HOLC. Sponsors of this clinic wanted to know if it would be possible to send patients to our hospital and have their doctors attend the patients. The board held open discussion on the subject and decided that as long as this clinic is not accepted by the District Medical Society that we cannot recognize it. They pay the doctors' salaries, charge monthly fees, do no charity work, and the men on their medical staff are not recognized by the District Medical Society. They want the hospitals to accept patients at the prevailing rates. If at a later date the District Medical Society accepts and approves this clinic, the board of trustees will consider the plan."

It was Dr. Custis who stated at the meeting, "We cannot recognize it" (Group Health Clinic). I recognize Mrs. Thompson's signature to the minutes of the meeting of the board of trustees of the hospital of December 30, 1937 (Gov. Ex. 454-A). They look like the minutes regularly kept by Mrs. Thompson pursuant to her duty as secretary of the board.

Gov. Ex. 454-A was offered in evidence. Defendants objected on the grounds that said evidence is incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had



been proven. The objection was overruled and exception noted.

Gov. Ex. 454-A was received in evidence and read from to the jury as follows:

"Dec. 30, 1937.

A meeting of the Board of Trustees of the National Homeopathic Hospital was held at 12 noon, December 30, 1937, at the hospital. Present: Col. Randall, presiding; Mrs. Dodge, Dr. Custis; Mr. McRae; Mr. Brown; Mr. Delos Smith; Mr. McKee; Mr. McLachlen; Mr. Doing and Mrs. Thompson.

The minutes of the previous meeting were read and accepted and the Treasurer's report was read. \* \* \*

A recommendation from the Executive Staff meeting that the Courtesy Staff be again accepted, with the exception of the Doctors who are not recognized by an organized Medical Society in Washington, D. C., and vicinity. These Doctors are to be given three months grace in which to join such a Medical Society. Dr. Custis moved that this recommendation from the Executive Staff be acted upon. It was duly seconded and carried. Mr. McLachlen suggested that the Hospital write letters to the accepted Doctors on the Courtesy Staff informing them of their acceptance and asking for their cooperation with the Hospital."

The executive staff of Homeopathic Hospital is composed solely of doctors on the staff. In the fall of 1937 Miss Frances Whitlock Hall was assistant superintendent of the hospital. I recognize her signature on the bottom of Gov. Ex. 339-A. At the time of the writing of the letter she was superintendent.

Gov. Ex. 339-A was offered in evidence. Defendants objected on the grounds that said letter is incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 339-A was read to the jury as follows:

"November 9, 1937.

Dr. C. B. Conklin, Secretary, Medical Society of the District of Columbia, 1718 M Street, N. W., Washington, D. C.

DEAR DR. CONKLIN:

As the attitude of the National Homeopathic Hospital toward the Group Health Association is apparently not clear

to various members of the District Medical Society, I am enclosing a copy of a letter sent today to their president, Mr. Penniman, by Dr. J. B. Gregg Custis, executive officer of our board of trustees.

Yours very truly, Frances Whitlock Hall, Superintendent."

Mrs. Treasure succeeded Miss Hall as superintendent of the hospital. I wasn't a member of the executive committee of doctors. The main items of expense of the hospital during 1937 were general operating expenses such as salaries, food, coal, electric light bills, and there was an expenditure of \$14,000 that year for a new heating system, and supplies such as medicine, sheets, and paints had to be bought. The main source of revenue was the rent received from patients for the rooms. We have expenses for running the office, but the officers receive no pay. We have expenses for medical and surgical care, nursing care, anesthesia, operating room, a drug section, X-rays and building maintenance.

#### Cross-examination.

By Mr. Leahy:

From 1936 to 1938 I was president of the board of trustees of Homeopathic. Mrs. Dodge is president of the ladies' board of the hospital. Other members of the board are Dr. Custis, Dr. McRae, Mr. T. J. Brown, Mr. Delos Smith, Mr. McKee, vice president of the Security Savings Bank, Mr. Lanier P. McLachlen, president of the McLachlen Banking Corporation, Mr. Doing, treasurer and vice president of the Washington Loan & Trust. The doctors I referred to that I knew at the hospital are the most active, and bring in the most patients, as I remember. Prior to the suggested change in the requirements discussed at the meeting of November 4, 1937, a doctor just couldn't come into the hospital with a patient and treat the patient, but before he could come in and treat a patient he was required to make application to the board for privileges. That application would be referred to the board of doctors who would pass upon it, and whatever action they would take and report to the board of trustees was generally upheld. I have been connected with the Homeopathic for five years, and the practice I have outlined has existed during that

time. The hospital staff members were passed on each year by our board. Each applicant for privileges was supposed to renew his application each year, but for a while we didn't adhere to that, although we are doing it now. An applicant for admission to the staff was required to be a graduate of a recognized medical school; to have served the necessary internship; to be experienced in the line of work he intended to do; and belong to some medical society; as we didn't confine our hospital to Homeopathics, but admitted allopathies as well, membership in a homeopathic or allopathic society would qualify him, provided the doctor had the other necessary qualifications.

During the time I was president of the board we didn't have any trouble with the District Medical Society or the AMA about any member of our staff being a member of the homeopathic society, and we were in good graces with them.

The question of changing the requirements for applicants for admission to either staff in the hospital came up on the evening of November 4, 1937. I am sure it was brought up at that meeting because I was surprised later to learn that the Medical Society had not taken that action and was still discussing the matter at their meeting of November 11, which I attended. There was a full discussion at the November 4 meeting and a difference of opinion among the members as to whether or not the hospital would recognize Group Health before it was accepted by the District Medical Society. I don't remember Dr. Custis' exact words, but it was that this was an organization in business and that they were not acceptable to the Medical Society, and then the Medical Society could not have a proficient staff if we accepted doctors from Group Health; and if we did accept them, the doctors who belonged to the Medical Association would have to resign from our Board. I think it was discussed that Group Health was probably illegal, and that it was financed by monies advanced by HOLC, and that the fees in the shape of dues which Group Health was charging would not be sufficient to carry them on once the money they got from HOLC was exhausted. The opinions I voiced and the opinion Dr. Custis voiced on both sides were considered by the full board, and of the nine members present, seven agreed with the views expressed by Dr. Custis, but after the vote was taken we were all for the whole as the action was then the action of the board of trustees, and

the matter was not further discussed. Dr. Custis said at the discussion that Group Health was very probably illegally conducting business, and said something about the finances of the clinic, and if the hospital at the time permitted Group Health doctors to practice in our hospital and later the medical society didn't approve the clinic, that then, under the constitution of the medical society, the doctors would be prevented from practicing in our hospital. There was a discussion about the doctors being paid salaries at Group Health and that Group Health charged monthly fees but were not going to do any charity work. Dr. Custis may have mentioned that the clinic wasn't set up to help the poor and that the poor would still be thrown back on the regular doctors who attended them. Dr. Custis took issue with me, and said in substance, "You couldn't provide good medical care for \$3 a month," and the conclusion of the action at the hospital was that if at a later date the medical society approved the clinic our board would then consider the Group Health plan. At the December 30th meeting the board approved a group of doctors for privileges brought in by the executive staff of the regular staff. The recommendation for approval came from the executive staff, which was composed of about 15 or 20 doctors. I am not sure of the wording of the recommendation that came from the executive staff but they brought in a recommendation and we approved it. The term "and vicinity" would take in the homeopathic society, the medical societies of Washington, Virginia, and Maryland, and in this sense they never changed the rule. The rule meant that if some of the staff didn't belong to the District Society, the homeopathic society, or the Virginia society, they would have three months to join a medical society, but after the meeting on November 4 I considered the rule to mean the Medical Society of the District only. The minutes of the meeting of November 4 do not reflect that, and say doctors are given three months grace in which to join "such a" medical society; the minutes say "with the exception of doctors who are not recognized by a recognized medical society in Washington and vicinity," and the way the minutes read this leaves the rule that we had applied before open, that they should apply to a society in Maryland or Virginia or in the District, and that would be sufficiently adjacent, and that seems to be the requirement of Gov. Ex. 454.

All the items of expenses that I described on direct exam-

ination were made necessary in the conduct, maintenance and operation of the hospital for the sick. We do not conduct a drug store for public patronage and have merely a department where we keep some drugs. We do not run a lunch room for public use at all, and we are not buying and selling coal as a business, and there wasn't anything we did in connection with the hospital except to incur the necessary expenditures required for a proper place for the sick.

#### Redirect examination:

My impression from Dr. Custis' statement was that the medical society had changed its requirements, or it might have been their by-laws, or something, that local medical society doctors could be on the staffs of the local hospitals only where all doctors and surgeons in the hospitals were members of the local society. That was one of the things the board was considering on the November 4 occasion concerning Group Health. Later I attended a meeting of the medical society on November 11, Armistice night, where Group Health was discussed and where the amendment adopted by our hospital was discussed.

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GEORGE W. DINGLE, a witness for the United States.

#### Direct examination:

By Mr. Timberlake:

I am a special agent of the Federal Bureau of Investigation and have been for five and a half years. I examine questioned documents, including a comparison of known handwriting, hand printing, typewriting and mechanical impressions and other forms of document work. I attended Indiana University and received degrees of Bachelor of Arts, Master of Arts, and Doctor of Philosophy. I have been doing special work in the field of document examinations and have testified in federal courts, before federal grand juries, and by deposition in military courts.

I have examined certain documents and conclude that the handwriting appearing on Gov. Ex. 311, the signature "J. Ogle Warfield," on Gov. Ex. 313, and the handwriting on Gov. Exs. 302, 303, and 308 are by the same person.



Gov. Exs. 302, 303, and 308 were offered in evidence. Defendants objected on the ground that the same are incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 302 and 303 were received in evidence and read to the jury as follows:

"Questionnaire—Garfield.

"1. What communication or inquiry has your hospital had from Group Health Association, Inc.?

"Asking to admit a Pt. & physician.

"2. What reply has your hospital made to Group Health Association, Inc.?

"Will admit Pt. Drs. must apply for priv. Dr. Selders has applied & will go thru routine.

"3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

"Dr. Henry Rolf Brown. —

"Dr. Allan E. Lee. —Yes.

"Dr. Mario Scandifio. —

"Dr. R. Stephen Hulburt. —

"Dr. Raymond E. Selders. —

"Dr. Edmond D. Wells. —

"4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

"Yes.

"5. Is the entire Medical Staff of your hospital reappointed annually?

"Yes.

"6. Are appointments to the Medical Staff of your hospital approved by The Medical Staff?

"Recommended by Med. Staff.

"7. What governing body of your hospital finally makes appointments to the Medical Staff?

"Bd. of Directors.

"8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

"Yes or have applied.

"9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?"

"Over 75%--All recent appointments."

"10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?"

"No, but for appts. to staff & privileges they use form recommended by A. M. A."

"11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.?"

"All active staff."

"12. Is your hospital a beneficiary of Community Chest funds?"

"Yes."

"13. Will you kindly make any other inquiry that you think might be pertinent at this time?"

Gov. Ex. 308 was received and read to the jury as follows:

"Questionnaire--Children's

"1. What communication or inquiry has your hospital had from Group Health Ass., Inc.?"

"Requesting admission of pts. & privileges for Dr. Selders."

"2. What reply has your hospital made to Group Health Association, Inc.?"

"Will admit pts. & Drs. must make regular application."

"3. Which, if any of the following Drs. are now members of your Medical Staff in any capacity or have privileges to practice in your hospital? [None.]"

After the name of Dr. Mario Scandifio there is the handwriting notation: "Resignation accepted."

"4. Is your hospital in sympathy with the policies of The Medical Society of D. C.?"

"Yes."

"5. Is the entire Medical Staff of your hospital reappointed annually?"

"Yes."

"6. Are appointments to the Medical Staff of your hospital approved by The Medical Staff?

"Yes—recommended.

"7. What governing body of your hospital finally makes appointments to the Medical Staff?

"Bd. of Directors.

"8. Does your hospital require membership in the Med. Soc. of D. C. as a qualification for appointments to its Medical Staff?

"Yes.

"9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

"100%.

"10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

"No.

"11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.?

"Probably majority.

"12. Is your hospital a beneficiary of Community Chest funds?

"Yes.

"13. Will you make any other inquiry that you think might be pertinent at this time?"

EDNA H. TREASURE, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am superintendent of National Homeopathic Hospital and have been for three years. In response to a subpoena I furnished Gov. Ex. 451, a roster of members and committees of the hospital, and it correctly reflects the names of all members of the medical staff of Homeopathic in the years 1937 and 1938.

Gov. Ex. 451 was offered in evidence. Defendants objected on the grounds that said document is incompetent,

irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Ex. 451 was received in evidence.)

As part of my duties I attended the meetings of the executive staff. It is the usual course for me to do so as I am secretary. I took down the minutes, but not verbatim, and intended them to reflect, in substance, what transpired. From February 23, 1938, on it was customary for me to attend meetings of the executive staff and take down minutes in substance, and sign such minutes. Gov. Ex. 469 is the bound minute book of the executive staff. I prepared the minutes therein of May 17, 1938, signed them after having written them up before the next meeting, from my official notes.

From Gov. Ex. 469, the minutes of the meeting of May 17, 1938, of the executive staff, a portion was offered in evidence. Defendants objected to the same on the grounds that they were incompetent, irrelevant and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception allowed.

The minutes of the meeting of May 17, 1938, of the executive staff, in Gov. Ex. 469, were read to the jury as follows:

"May 17, 1938.

"The regular meeting of the Executive Staff was held at 12:30 p. m. in the Superintendent's office, Dr. Sappington presiding.

"Applications for courtesy staff memberships were considered and approved for:

"Dr. Hyder—Normal OB medicine, anesthesia.

"Dr. Verlin E. Miles—Normal OB medicine.

"Recommendation was made that applications be approved, with the understanding that continuous service on the courtesy staff be contingent upon affiliation with only those associations approved and recognized by the Dist. Medical Society.

"A motion was made by Dr. Custis that notice of the above action be sent to all hospitals and the D. M. S."

Cross-examination.

By Mr. Leahy:

I have no independent recollection at this time of what transpired at the May 17 meeting. A quorum of the execu-

tive staff is five, and there must have been at least that many members present. The executive staff at that time consisted of Drs. W. P. Baker, J. H. Branson, Tomas Cajigas, J. B. G. Custis, J. F. Davidson, Claude Moore, Bernard Notes, E. F. Sappington, J. P. Shearer, W. C. Sterling, and C. F. Warner.

Gov. Ex. 470 was offered in evidence on the basis of a comparison of the signature of Dr. Conklin with a number of exhibits in evidence. It was produced from the files of Georgetown Hospital in response to a subpoena.

(Gov. Ex. 470 was received in evidence.)

JUNE M. GRUBB, a witness for the United States:

Direct examination.

By Mr. Timberlake:

I am secretary to Dr. Dardinski and have been such for five months. I am familiar with his signature, and his signature appears on Gov. Ex. 471.

Gov. Ex. 471 was offered in evidence. The defendants objected on the grounds that the same was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception allowed.

(Gov. Ex. 471 was received in evidence.)

BENJAMIN B. SANDIDGE, a witness for the United States:

Direct examination.

By Mr. Allen:

From January 1, 1937, to December 20, 1938, I was superintendent of Emergency Hospital. In most instances I attended executive staff meetings of the hospital. It was the custom of this staff to take regular minutes in the regular course of its business and to keep a record of those minutes. Gov. Ex. 472 is a minute book of the executive staff of Emergency Hospital. The minutes therein of the



meeting of February 18, 1938, I believe, are signed by Dr. John H. Lyons, secretary of the staff. The minutes therein of June 1, 1938, are true and correct. This book was produced in response to a subpoena by the hospital.

From Gov. Ex. 472 the minutes of the meetings of February 18, 1938, and June 1, 1938, were offered in evidence. Defendants objected to the same on the grounds that they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The further objection was made that the matters stated in the minutes are mere recitals and not formal resolutions; that the minutes are hearsay; that no alleged conspirator was present; that no conspiracy involving the hospital had been proven. The objections were overruled and exception noted.

(The minutes of the meeting of February 18, 1938, and June 1, 1938, from Gov. Ex. 472, were received in evidence.)

Gov. Ex. 473 is a copy of a letter to Dr. Lee. Gov. Ex. 474 is a true copy of a letter dated November 10, 1937, from B. B. Sandidge to Dr. Allen E. Lee.

Gov. Exs. 473 and 474 were offered in evidence. Defendants objected on the grounds that said letters were incompetent, irrelevant, and immaterial, and hearsay; as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 475, which is the original of Gov. Ex. 78, is a letter Major Blair asked me to sign and which I did in his name.

Gov. Ex. 475, a letter from President Blair of Emergency Hospital to the president and board of directors, Garfield Hospital, was offered in evidence. Defendants objected on the ground that said letter was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven, and urged the further objection that Gov. Ex. 475 was clearly inadmissible because passing from one hospital to another, rendering it immaterial. The objection was overruled and exception noted.

(Gov. Ex. 475 was received in evidence.)

Gov. Ex. 476 was offered in evidence to show knowledge on the part of the medical society against all co-conspirators. A copy of this letter was received in evidence attached to a letter from Conklin to Hooe. Defendants objected to the same on the ground that it was incompetent, irrelevant,

and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Ex. 476 was received in evidence.)

Gov. Ex. 76 is signed with Major Blair's signature by me under his direction. Gov. Ex. 477 is a list of the courtesy staff of Emergency Hospital in 1937 and 1938.

(Gov. Ex. 477 was received in evidence.)

Dr. William B. Marbury is on the staff of Emergency but I cannot identify the signature on Gov. Ex. 295-A as his. Gov. Ex. 478 was received with the enclosure by me. Gov. Ex. 479 went to the files of Emergency Hospital, didn't come directly to me; I had it taken out of the files in response to a subpoena. Gov. Ex. 480 is a true copy of the annual report of Emergency Hospital for the year ending December 31, 1938.

Gov. Ex. 478, 479, and part of 480 were offered in evidence. Defendants objected to Gov. Ex. 480 as incompetent, immaterial, irrelevant, and hearsay as no conspiracy had been proven. Objection overruled and exception noted.

(Gov. Ex. 478, 479 and pp. 6, 7, 8, 30 and 31 of Gov. Ex. 480 were received in evidence.)

Gov. Ex. 473, a copy of a letter on the letterhead of Central Dispensary and Emergency Hospital from B. B. Sandidge, Superintendent of Emergency Hospital to Dr. Allen E. Lee, dated November 1, 1937, was read to jury as follows:

"DEAR DR. LEE:

Your name has been withdrawn from the list of those to whom the Courtesy Privileges of treating patients at Emergency Hospital is extended, due to the fact that we are advised you are not a member of the Medical Society of the District of Columbia."

Gov. Ex. 474, a carbon copy of a letter dated November 10, 1937, from B. B. Sandidge to Dr. Allen E. Lee, was read to jury as follows:

"DEAR DR. LEE:

On November 1st, 1937, we wrote you to the effect that your name had been withdrawn from the list of those to

whom the courtesy privilege of treating patients at Emergency Hospital is extended, due to the fact that you were no longer a member of the Medical Society of the District of Columbia.

We have since learned that this information was not correct and that your name is still on the membership roster of the District Medical Society, and I am writing to apologize for this error on our part.

As you are aware, one of the requirements at our Institution for a doctor to be extended the privilege of treating patients at this hospital is that he be a member of the District Medical Society, and in view of the fact that your status is still such, and until we are officially notified to the contrary, you are extended courtesy privileges as was your status heretofore.

I wish to assure you that no personal element entered into this action, and again apologizing for this misunderstanding, we beg to remain,

Very truly yours,"

Cross-examination.

By Mr. Leahy:

I am still superintendent of Emergency and have been superintendent since 1920. I am responsible for the general management of the hospital. Major Blair was president of the board of directors of Emergency. He was a lawyer and is now deceased. Dr. James Mitchell, a surgeon, is general chief of staff.

The other members of the executive committee present at the time were physicians and specialists. There were 11 members on the executive staff. At the meeting there was a great deal of discussion of the fact that other hospitals were granting privileges to Dr. Selders while Emergency had not. On February 18, 1938, there was a rule in force at Emergency that only members of the District Medical Society could be on the staff of that hospital, and that rule had been in force since April, 1936, a long time prior to Group Health. Major Blair wrote Gov. Ex. 475 about Dr. Selders being permitted to take Miss Abbott into Garfield Hospital when he couldn't take her into Emergency. The transfer of Miss Abbott to Garfield for treatment after leaving Emergency was the reason for the discussion in the minutes. The statement in the minutes that the board at

Emergency expressed its appreciation for Major Blair's support of their courtesy staff refers to the fact that Major Blair supported the rules and regulations which had been in effect since April, 1936, that only members of the hospital staff could practice in the hospital. That rule didn't refer to emergency cases because as is stated on page 6 of Gov. Ex. 480: "No patient is ever turned away from Emergency Hospital without treatment and advice." Gov. Ex. 473 was written because of the rule that had been in force since April, 1936, and that is the only reason it was written, as there was nothing personally against Dr. Lee, to my knowledge. The letter wasn't written to Dr. Lee because he was connected with Group Health in any way, and whether he was or was not connected with Group Health didn't bring forth that letter. I wrote it because we thought he had not been extended courtesy privileges, that he was not a member of the District Medical Society. When I found we were mistaken and he was a member of the District Society, Gov. Ex. 474 was sent. Gov. Ex. 478 and 479 came over my desk. Gov. Ex. 480 is a report to the board of trustees.

Gov. Ex. 480 was read to the jury as follows:

#### "Annual Report of the Superintendent

In this period of changes, new systems being adopted and the general rapid pace of experimentation, in plans for the health needs and hospitalization of our people who are in need of same, it would seem appropriate at this time to take a few minutes for retrospection.

The great need in our city, for an institution of the character of the Central Dispensary and Emergency Hospital, was manifested as far back as the year 1871, for at that time the majority of supposed-to-be trivial accidents were taken to the police stations where the police surgeon was summoned. In case he could not be located, a doctor was sent for. Much unnecessary suffering was caused by this, and the consequences of neglect (often unavoidable), were sometimes disastrous.

Public spirited citizens quickly recognized this inadequate condition of caring for the unfortunate, and this need resulted in the establishment of the present Emergency Hospital. The Charter of Incorporation (1882), reads as follows:

That the particular object of the Association or Society is to provide a suitable building in the city of Washington, D. C., for a dispensary where all needy persons without distinction may be provided gratuitously with medical and surgical service and treatment and with medicine.

In the following paragraphs I will endeavor to describe briefly how well the hospital has kept faith with the public throughout these many years.

For the first year's operation \$150 was subscribed, and this, together with \$278 appropriated by the Legislature of the District, was the sum total for the treatment of 511 patients.

For the year 1938, there was a money turn-over in the amount of \$568,638.75. The greater part of this money was spent in the city of Washington, and employment was furnished to a daily average of some 344 persons on the hospital payroll, in addition to more than 100 special nurses daily engaged by the patients and other personnel in departments financed independently of the hospital proper.

Therefore, as it stands today, from the standpoint of a financial enterprise alone, Emergency Hospital takes its place as one of the important business organizations of our city.

The number of Hospital Days furnished patients for the year was	85,109
The number of Dispensary Visits furnished patients for the year was	25,110
The number of Emergency Room Visits furnished patients for the year was	14,569
The number of Ambulance Trips furnished patients for the year was	3,313

No patient is ever turned away from Emergency Hospital without treatment and advice. If the nature of the patient's illness is a type as to make it dangerous for those patients already hospitalized, such first aid as is needed is given, and arrangements made for proper transfer.

In living up to its charter and meeting the many demands for charity and part-charity during the year that this report covers, the hospital had to donate more than \$75,000 from its own resources, with a consequent deficit for the year of \$22,940.34, despite the most careful and economical management consistent with the high type of service which has been characteristic throughout its career.



The hospital management is indeed grateful for the patronage of those patients who paid more than the cost of care, for this addition to cost was a direct contribution to public charity (the hospital being organized Not For Profit). However, this type of patient was not sufficient in number at prevailing rates established in the hospital to carry all of this additional load, and philanthropic support was not as generous as in some former years. Nevertheless, the hospital authorities have followed the practice that if the hospital continues to maintain a deep regard for the health of the community as a whole, pay and free alike, the public as well as the Government will appreciate this humanitarian and necessary foresight, and will respond in due course to its financial needs.

Aside from this great humanitarian work, which the hospital is doing, the great numbers of fine and splendidly trained young doctors and nurses who receive all or a part of their professional training here should not be overlooked. It is really inspiring to have them return, from all sections of the country, to pay a visit and speak in grateful appreciation of the excellent training they received here.

Notwithstanding this great volume of work carried on year after year, the hospital has kept pace with modern methods and equipment. The physical plant has not been allowed to depreciate, new additions have been added. Modern equipment has been installed, such as air-conditioning units, devices for more direct communication, and many such improvements for the comfort of and service to patients and doctors."

Then follow some additions to the equipment, some of the more important highlights of 1938, such as the establishment of a blood transfusion fund, the purchase of a Bell fracture table, laboratories, and so forth, and then it says (reading further):

"The Ladies Auxiliary Board, as usual, has been active throughout the year, and we are indebted to this Board of fine women for their deep interest in the hospital and the splendid assistance they render. Their secretary's report is submitted separately, as well as reports from the various department heads."

Then "I record here with sorrow and a feeling of great loss the passing during the year" of certain people inter-

ested and closely identified with the hospital, and he signs it as his 19th Annual Report.

Pages 30 and 31 give the hospital staff, as Superintendent, Mr. B. B. Sandidge, and then there are an assistant superintendent, a night-assistant superintendent, an auditor, and a secretary to the Superintendent. Then there is an Interne Committee, residents and assistant residents, internes, nursing staff, hospital staff, all named under their respective committees.

With respect to the contents of the report, in so far as it shows detail, such as the number of people on the pay roll, the number of nurses, those persons were necessary attendants required in operating and maintaining the hospital for the care of the sick, and any expenses incurred in the maintenance of the hospital are incurred for the maintenance and operation of a nonprofit institution for the care of the sick.

It was thereupon stipulated between counsel that the statement of the Court was correct, concerning Emergency Hospital as follows:

"It appears quite clearly that the institution is a non-profit institution. It carries on its business along that line and all of its funds are directed to that particular purpose."

The rule at Emergency is that the courtesy staff is checked each year and automatically kept up-to-date, and each year each member of the courtesy list is notified that privileges for the ensuing year are extended. There is nothing unusual in checking the courtesy list; just to bring it up to date, to go over it, and see that it is in correct order.

#### Redirect examination:

I can't testify that there were no exceptions to the rule that every physician who had courtesy privileges in 1937 was a member of the District Medical Society. In June, 1938, the staff found it expedient to make a recheck to further enforce the rule and regulation adopted in April, 1936. When the courtesy staff file was originally made up, the ruling that they had to be members of the District Medical Society was not in force, and, naturally, there were some men, who were not members, who were not automatically dropped; some of them, I feel quite sure, were carried on. I mean by that that the courtesy list was not

brought right up to date so that it would coincide with membership of the District Medical Society, and as of June 1, 1938, when we checked, there may have been some exceptions.

Gov. Ex. 472 (Minutes of June 1, 1938) was read from to the jury as follows:

"A special meeting of the Executive Staff was held in Emergency Hospital. The recommendations of the courtesy committee in regard to approval or disapproval of applications for the courtesy staff were approved by the staff. It was directed that the courtesy committee carefully check the list of the doctors who had been given courtesy privileges in Emergency and who are not members of the Medical Society or their local medical societies in the case of physicians who are non-residents of the District, and that these members be notified that they must join the Medical Society, or the hospital will be obliged to revoke their privileges."

Gov. Ex. 446-A, carbon copy of letter, Dr. Fishback to "Dear John"—identified as Dr. John Lyons—on letterhead of Washington Academy of Surgery, dated December 9, 1937, was read to the jury as follows:

"DEAR JOHN:

I have transmitted your report to George Washington University Hospital. . . .

I am anxious to talk to you before you reach any decision on Dr. Selders, especially if there is feeling that he will be disapproved purely because of his connection here in Washington. As a matter of policy and tact, and I believe for the good of general public attitude toward the profession, the question of his relationship to the Group Health Association, Inc., should not be permitted to enter the discussion."

Gov. Ex. 444-A, minutes of the meeting of the Washington Academy of Surgery of December 10, 1937, was read from to the jury as follows:

"Discussion concerning the Group Health Association ensued. It was suggested that the professional qualifications of the surgeon of that organization alone be considered, as a matter of public policy. However a motion

of Dr. Sager's was passed requesting the Hospital Privilege Committee to consider the ethics of any applicant as well as his strictly surgical training and experience. Ethics were understood to be as defined by the American Medical Association. It was emphasized that investigation should include knowledge of an applicant's earlier behavior in other communities before coming to this locality."

Gov. Ex. 445-A, letter from secretary of Washington Academy of Surgery to superintendent of George Washington Hospital, December 8, 1937, was read to the jury as follows:

"SIR:

The Committee on Hospital Privileges recommends:

1. Approval of Dr. Howard H. Strine for general surgery.
2. Approval of Dr. Carolyn S. Pincock for Minor Surgery.
3. Disapproval of Dr. Allen E. Lee to do general surgery.
4. Disapproval of Dr. Paul Banet to do surgery.
5. Application of Dr. Ross Taggart is for privileges in normal obstetrics and therefore is returned without action.
6. The Committee is attempting to obtain further information on Dr. Raymond E. Selders, and is not yet able to act on his application.

Very sincerely yours, F. C. Fishback, Secretary,  
Washington Academy of Surgery."

Gov. Ex. 447-A, carbon copy of letter from Secretary, Washington Academy of Surgery, to Colonel P. M. Ashburn, Columbia Hospital for Women, dated January 31, 1938, was read to the jury as follows:

"DEAR COLONEL ASHBURN:

I have today been informed by the Committee on Hospital Privilege that they recommend the disapproval of the application of Dr. Raymond Selders to do general surgery.

Very sincerely yours, F. C. Fishback, Secretary,  
Washington Academy of Surgery."

From Gov. Ex. 448-A, 449-A, and 450-A, letters from the secretary, Washington Academy of Surgery, to Provi-

dence, Georgetown University, and Garfield Memorial Hospitals, all dated January 31, 1938, the following quotation was read to the jury:

"The committee recommends disapproval of the application of Dr. Selders."

FRANCIS J. EISEMAN, a Witness for the United States.

Direct examination.

By Mr. Lewin:

I am superintendent of Garfield Hospital and was such in 1937 and 1938. Gov. Ex. 481 is a correct roster of the staff of Garfield for 1937. Gov. Ex. 482 lists certain committees of Garfield Hospital and bears my signature; these lists are correct. Gov. Ex. 483 is a copy of a letter which I sent to Dr. Selders dated November 15, 1937. Dr. McGovern was secretary of the Advisory Committee of the staff at Garfield in January 1938. Gov. Ex. 484 bears Dr. McGovern's signature. Gov. Ex. 485 bears my signature. At the time I wrote Gov. Ex. 485, Dr. Harry Kerr, Dr. F. X. McGovern, Dr. Strine, and Dr. Charles Stanley White were on the Surgical Service of Garfield Hospital. Gov. Ex. 486 appears to be the correct minutes of the meeting of the Advisory Committee of the medical staff of December 6, 1937. It was customary for the committee to keep minutes; they were kept by the secretary, and Dr. McGovern's name is at the end of the minutes, as secretary. Gov. Ex. 487 is a correct carbon copy of a report which I sent to President Aspinwall of Garfield. Gov. Ex. 488 is a report which I received from Dr. T. J. Dugan, and bears his signature. Gov. Ex. 489 bears Dr. Dugan's signature.

Cross-examination.

By Mr. Leahy:

There is no signature on Gov. Ex. 486.



FLORA HITCH, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am employed by Dr. William B. Marbury as a nurse-secretary; Gov. Ex. 295-A bears Dr. Marbury's signature.

Cross-examination.

By Mr. Leahy:

The only writing on Gov. Ex. 295-A of Dr. Marbury's is the signature.

Gov. Ex. 295-A was offered in evidence. The defendants objected on the ground that said writing was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 295-A was received in evidence and read to the jury as follows:

"1. What communication has your hospital had from Group Health Association, Inc.?"

"There has been some communication; the exact nature of which is not known."

"2. What reply has your hospital made to Group Health Association, Inc.?"

"In effect that patients would be accepted, but could only be treated by doctors on staff, and courtesy lists."

"3. Which, if any, of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?"

A checkmark opposite the name of Dr. Allen E. Lee.

"4. Is your hospital in sympathy with the policies of the Medical Soc. of D. C.?"

"Yes."

"5. Is the entire Medical Staff of your hospital reappointed annually?"

"Yes."

"6. Are appointments to The Medical Staff of your hospital approved by The Medical Staff?"

"Yes."

"7. What governing body of your hospital finally makes appointments to the Medical Staff?

"The Executive Staff.

"8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

"Yes.

"9. What percentage of the entire Medical Staff of your hospital are members of the Medical Society of D. C.?

"Supposedly 100 per cent. Not checked.

"10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

"Yes.

"11. What percentage of the entire medical staff of your hospital are members of the A. M. A.?

"Supposedly 100 per cent. Not checked.

"12. Is your hospital a beneficiary of Community Chest funds?

"Yes.

"13. Will you kindly make any other inquiry that you think might be pertinent at this time?

"William B. Marbury."

The Court: What hospital is that?

Mr. Kelleher: That is Emergency, your Honor.

CAROLINE REECE EPPERLEY, a witness for the United States.

Direct Examination.

By Mr. Allen:

From January 1, 1937, to December 20, 1938, I was executive assistant to the president, Louis H. Taylor, at Sibley Hospital. I wrote Gov. Ex. 490 and it bears Dr. Taylor's signature. To the best of my knowledge I wrote Gov. Ex. 491 at the direction of Dr. Taylor. Gov. Ex. 492 are true and correct copies of the roster of the medical staffs of

Sibley Hospital. I typed Gov. Ex. 493 and it bears Dr. Taylor's signature.

**Cross-examination.**

**By Mr. Leahy:**

I am now working at Sibley as secretary to the president, Dr. Orem. Dr. Taylor is dead. Gov. Ex. 492 covers the years 1937 and 1938.

Gov. Ex. 490, 491, 492, and 493, together with Gov. Ex. 494 and 495, obtained under subpoena from Sibley Hospital, were offered in evidence. Defendants objected on the ground that the said documents were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Ex. 490, 491, 492, 493, 494, and 495 were received in evidence.)

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BEULAH C. MUMFORD, a witness for the United States.

**Direct Examination.**

**By Mr. Allen:**

From January 1, 1937, to December 30, 1938, I was admitting nurse at Sibley Hospital. As admitting nurse I made all reservations for incoming patients from doctors as they called in, assigned the rooms, scheduled operations, wrote pre-operative orders and admitted patients. Dr. Taylor was president of Sibley at that time. As part of my duties, if some physician called up who didn't have privileges, it was my duty to determine whether to admit him from instructions previously had from Dr. Taylor.

Gov. Ex. 496 is a little memorandum for our own personal use which I wrote, and which we kept as a reminder. I came to write it as so many people were relieving in our office and we were told verbally that these people whose names were on it should not have reservations if calling, so that anyone relieving would be able to find the memorandum, as it is hard to carry everything in your head. The

memorandum was made under instructions of no one. It was a personal memorandum. The president of the hospital told me not to let these people in.

Cross-examination.

By Mr. Leahy:

Gov. Ex. 496 is in my handwriting, except the signatures. The memorandum was kept in our office and the persons signing had been asked to read and sign it. I wrote Gov. Ex. 496 as my own personal memorandum, and the language is my language. I don't recall the date I wrote it.

Redirect Examination.

The persons relieving were staff members who did similar work as I did, relieving in the admission office at times.

Gov. Ex. 496 was offered in evidence. In addition to the general objections that the paper was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven, particularly one involving Sibley Hospital, the defendants stated that this memorandum was inadmissible as made by an employee in her own handwriting and for her own personal convenience, and it was nothing more than her own personal memorandum, particularly in view of the fact that Dr. Taylor is deceased, and as there was no evidence that the memorandum was written in the course of her duties as an agent of the hospital. The objections were overruled, exception noted.

(Gov. Ex. 496 was admitted in evidence.)

Gov. Ex. 481, 482, 483, 484, 485, 486, 487, 498, 499, and 500 were offered in evidence. The defendants objected to these documents on the grounds they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. Further, that the Gov. Ex. 499 was not properly proven, that Gov. Ex. 481 was evidence submitted to the Grand Jury and was privileged, and to permit its use would be to violate the secrecy of Grand Jury proceedings. These objections were overruled and exception noted.

(Gov. Ex. 481 was received in evidence.)

Gov. Ex. 482 was received in evidence, and read from to jury as follows:

"Exhibit 482—Garfield Hospital—names of members of advisory committee of medical staff as of January 1, 1936:

Dr. H. C. Macatee, Chairman, Dr. J. W. Lindsay, Secretary, Dr. B. P. Weems, Dr. J. H. Kerr, Dr. F. J. Eisenman, Superintendent."

Advisory Committee of the medical staff as of January 1, 1938:

"Dr. H. C. Macatee, Chairman, Dr. F. X. McGovern, Secretary, Dr. A. B. Bennett, Dr. T. E. Neill, Dr. L. C. Baker, Dr. R. L. Silvester, Dr. F. J. Eisenman, Superintendent.

In October, 1938, Dr. R. L. Silvester was elected as Secretary of the Advisory Committee in place of Dr. McGovern."

Gov. Ex. 483, carbon copy of letter dated November 15, 1937, from Francis J. Eisenman to Dr. Raymond E. Selders, was received in evidence and read to the jury as follows:

"MY DEAR MR. SELDERS:

Acknowledge receipt of a request for Surgical Privileges at Garfield Memorial Hospital. Your application has been referred to the Advisory Committee for action at their next meeting.

You, no doubt, are cognizant with the routine procedure for courtesy privileges in all Class A hospitals. We have required for the past twelve years or more that all such requests be referred to the Medical Advisory Committee of the Board of Directors for recommendation.

This Committee is expected to meet on or about November 29, 1937.

"Sincerely yours,"

Gov. Ex. 500 was received in evidence and described as the letter sent by Dr. Conklin to Garfield Hospital enclosing the approved list of the Medical Society.

Gov. Ex. 498, letter from Dr. Conklin to the chief of staff, Garfield Hospital, dated December 2, 1937, was received in evidence and read to the jury as follows:

"DEAR DOCTOR:

Pursuant to formal action of the Medical Society of the District of Columbia, in session on the evening of December 1, 1937, the attached resolution is sent to you.

Very truly yours, C. B. Conklin, M. D., Secretary."



"The Medical Society of the District of Columbia, 1718 M Street, Washington.

Resolution adopted by the Society, in session on the evening of December 1, 1937.

RESOLVED, That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire Medical Staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local medical society in this immediate neighborhood and a member of the American Medical Association."

Gov. Ex. 486, minutes of the Advisory Committee, Medical Staff, Garfield Hospital, December 6, 1937, with the type-written signature of the secretary, F. X. McGovern, M. D., was read from to the jury as follows:

"The Secretary was requested to reply to the Medical Society of the District of Columbia in regard to a Resolution passed by the Medical Society on December 1, 1937."

Gov. Ex. 484, letter from Dr. McGovern to Dr. Conklin, was received in evidence and read to the jury as follows:

"DEAR DOCTOR CONKLIN:

In reply to your letter of December 2, 1937, enclosing the resolution of the Medical Society adopted December 1, 1937, I have been requested to advise you that the present policy in force at Garfield Hospital is in conformity with the provisions of the above-mentioned resolution.

Respectfully yours, F. X. McGovern, Secretary, Advisory Committee."

Gov. Ex. 485, memorandum from superintendent, Garfield Hospital, to Surgical Service, Garfield Hospital, dated December 3, 1937, was received in evidence and read to the jury as follows:

"GENTLEMEN:

Refer for your consideration the application of Dr. Raymond E. Selders for Surgical Privileges. This is not a 'Run of Mine' case, and your action may be far-reaching.

Information shows him to have sufficient training for personal recognition, when compared with many now approved for courtesy privileges at Garfield Memorial Hospital. He is a member in good standing in A. M. A., County and State Medical Societies in Texas, and was returning from Massachusetts to Texas when offered the position with H. O. L. C.

Should your recommendation be adverse, for other than personal qualifications, request they be stated, in order that the Board of Directors might have the benefit of your advice and counsel.

Three Applications sent the Academy of Surgeons, (two of which were returned the second time) on September 24, 1937. They approved of Dr. deBayle, made no comment on Dr. Garbo, and did not even return the papers on Dr. Taggart, both of whom are practicing here, awaiting action on their application.

Application of Dr. Wm. Hollister for Jr. Associate in Surgery. No vacancy.

"Yours very truly,"

Gov. Ex. 499, letter from Dr. McGovern, Secretary, Advisory Committee, Medical Staff, Garfield Memorial Hospital, to Mr. C. A. Aspinwall, President, Board of Directors, Garfield Memorial Hospital, dated December 17, 1937, was read to the jury as follows:

"MY DEAR MR. ASPINWALL:

The following is recommendation of the Advisory Committee of the Medical Staff to the Board of Directors of Garfield Memorial Hospital:

'That pending the settlement of the question raised as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders, that he be not granted Courtesy Privileges at Garfield Memorial Hospital, except of course in a real emergency.'

The reason prompting this recommendation is the fact that Group Health Association, Inc., a lay corporation, is considered unethical by the Medical Society of the District of Columbia, and its legality is being questioned. Dr. Selders has been hired by Group Health Association as its surgeon. It is the opinion of the Advisory Committee that if Garfield Hospital allows Dr. Selders courtesy privileges

that it would be placed in the light of aiding and abetting Group Health Association, Inc.

Yours very truly, F. X. McGovern, M. D., Secretary,  
Advisory Committee Medical Staff."

Gov. Ex. 487, report from superintendent, Garfield Hospital, to Mr. C. A. Aspinwall, March 28, 1938, was received in evidence and read to the jury as follows:

"MY DEAR MR. ASPINWALL:

I went over the Minutes of the Executive Committee and Board of Directors for the past nine months and find the following:

In February 10 Executive Committee meeting a letter from Mr. Kirkpatrick re Dr. Selders privileges was read. No action.

December 28, 1937, Executive Committee. The Committee considered the Resolution of the Medical Staff on application of Dr. Selders as follows:

'That pending the settlement of the question as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders, that he be not granted Courtesy Privileges at Garfield Memorial Hospital, except, of course, in a real emergency.'

Discussed, accepted and referred to the Board of Directors, recommending approval.

Meeting of the Board of Directors of March 22, 1938, the President in reviewing the proceedings stated our official connection with Group Health Association was the application of Dr. Selders for surgical privileges, the temporary privileges extended him awaiting action on the application, and the withdrawal of these privileges on recommendation of the Medical Staff, (As noted in Resolution Executive Committee meeting of Dec. 28, 1937), awaiting legality of Group Health Association. The actual disqualification of Dr. Selders' application was by the Board of Directors at meeting on January 25, 1938, in which the Minutes of the Executive Committee meeting of December 28, 1937, were read.

'In approving these Minutes, the Board desired to state that in denying the privileges of the Courtesy Staff of the Hospital to Dr. Raymond E. Selders on the recommendation of the Medical Staff of the Hospital, the action was pending the legality of the Organization who employed Dr. Selders.'

Yours very truly, F. J. Eiseman, M. D., Superintendent."

CLAUDE C. CAYLOR, a witness for the United States.

Direct examination.

By Mr. Allen:

I am now and in 1937 and 1938 was in business for myself. In 1937 and 1938 I was secretary of Providence Hospital. Gov. Ex. 501 I typed and signed, and it bears my handwriting. As part of my duties I attended meetings of the executive committee. Minutes of such meetings were kept in the regular course of business. I kept the minutes as part of my duties. Gov. Ex. 502 are the minutes of the meeting of November 18, 1937.

Gov. Ex. 503 bears my signature. Gov. Ex. 504 appears to be a true copy of the roster of the regular staff at Providence Hospital for 1938. I am unable to identify Gov. Ex. 505. Sister Rosa is in charge of the administrative staff. I have never seen Gov. Ex. 298 and 299 before.

Gov. Exs. 501, 502, 503, and 504, together with Gov. Ex. 506, were offered in evidence. Defendants objected to the documents offered on the ground that they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objections were overruled and exception noted.

Gov. Ex. 501 was received in evidence and read to the jury as follows:

It is on the stationery of the X-Ray Department, Providence Hospital, Washington, D. C. There is a hand-written notation in the righthand corner "Copy of Letter sent by me to non-members of the D. C. Medical Society," signed "C. C. Caylor."

"As a result of the recent inspection of Providence Hospital by the Council on Medical Education and Hospitals of the American Medical Association, we have been reminded that several of our Staff members are not members of the American Medical Association or any of its constituent societies. This is one of the requirements to be met in order to be acceptable for approval for interne training, and at a recent meeting of the Executive Staff it was voted to request all members of the Staff to cooperate in meeting this requirement.

The Staff has instructed me to inquire if you will not cooperate with it in meeting this requirement?

If you are now a member of the American Medical Association or any of its constituent societies, please let me have that information.

Yours very truly,"

Gov. Ex. 502, minutes of the executive staff of Providence Hospital, dated November 18, 1937, was received in evidence and read from to the jury as follows:

"Minutes of the Executive Staff, November 18, 1937.

The meeting was called to order by the President, Dr. Mundell, with Sisters Rosa and Gertrude, and Drs. Fadeley, Putski, Cahill, Duehring, Sanderson, O'Donnell, Moody, Hess, Leibell, Caylor, Higgins and Argy present.

The minutes of the October meeting were read and approved.

The report of the interne committee was approved.

Correspondence between the Group Hospital Association and the Hospital was read relative to the admission of beneficiaries of the Association to the hospital, and the care of such patients. It was brought out that such patients would be admitted in accordance with the regulations of the hospital, and that physicians in the employ of the Association should first obtain hospital privileges in the usual manner before they could attend such patients.

The meeting then adjourned.

C. C. Caylor, Sec."

Gov. Ex. 503, letter dated February 17, 1938, from Dr. Caylor to Dr. Selders, was received in evidence and read to the jury as follows:



"DEAR DR. SELDERS:

I regret to inform you that your application for privileges to practice in Providence Hospital has been disapproved by the Staff.

Yours truly, Claude C. Caylor, M. D., Secretary."

Gov. Ex. 504 was received in evidence and described as the "Regular staff for 1938" of Providence Hospital.

Gov. Ex. 506 was received in evidence and described as a letter from Dr. Conklin to the Chief of Staff of Providence Hospital dated December 2, 1937, and enclosing December 1 resolution.

The Court then overruled the objection of the defendants to Gov. Exs. 417-430, inclusive, which had previously been offered in evidence, and allowed an exception.

(Gov. Exs. 417-430, inclusive, were received in evidence.)

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MARIAN DANIEL GODBOLD, a witness on behalf of the United States.

Direct examination.

By Mr. Lewin:

I was secretary to the superintendent of Columbia Hospital, Col. Frank Ashburn, now deceased, during 1937 and 1938. Gov. Ex. 507 bears Col. Ashburn's signature. Col. Ashburn was also secretary of the board and it was customary for him to keep minutes of the meetings of the executive committee, and he kept minutes. Gov. Ex. 507 are the minutes of the meeting of December 2, 1937. It was customary for Col. Ashburn to keep minutes of the meetings of the board of directors of Columbia Hospital. I typed Gov. Ex. 508, which are the minutes of the meeting of the board of September 21, 1938, and they bear Col. Ashburn's signature. Col. Ashburn was secretary of the medical board, and it was his custom to keep the minutes of that board. Gov. Ex. 509 are the minutes of the medical board of the meeting of April 14, 1938. Gov. Ex. 510 are the minutes of that board of June 9, 1938. Gov. Ex. 511 are the minutes of the medical board of September 19, 1938. Gov. Ex. 512 are the minutes of the medical board of December 9, 1938. Gov.

Exs. 509, 510, 511, and 512 are signed by Col. Ashburn. Gov. Ex. 513 is a copy of the roster of the medical staff, attending and consulting, of Columbia Hospital, for the years 1937 and 1938.

### Cross-examination.

By Mr. Leahy:

I typed the minutes of the executive committee meetings, of the board of directors, and one of the minutes of the medical board. The other minutes of the medical board were typed by another clerk, but Col. Ashburn wrote those out himself. I saw them myself. I took stenographic notes of the minutes, made rough copies of them, and had them corrected by Col. Ashburn.

The Court then overruled defendants' objections to Gov. Exs. 451, 452, 453, 455, 456, and 457, which had previously been offered in evidence and allowed an exception.

(Gov. Exs. 451, 452, 453, 455, 456, and 457 were received in evidence.)

Gov. Exs. 507, 508, 509, 510, 511, 512, 513, 514, and 515 were offered in evidence. Defendants objected on the grounds that the documents were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 507, 508, 509, 510, 511, 512, 513, 514, and 515 were received in evidence.)

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DR. FRED O. COE, a witness for the United States.

### Direct examination.

By Mr. Timberlake:

I am a member of the executive staff of Georgetown Hospital and was such during 1937 and 1938. I am familiar with the minutes of the meetings of the executive committee and with Dr. Dardinski's signature. Dr. Dardinski's signature appears on Gov. Ex. 516, the minutes of a meeting of the executive committee of January 20, 1938. It was the regular practice of the hospital to have minutes taken

of its meetings. Dr. Dardinski was charged with the duty of taking minutes. Gov. Ex. 517 are the minutes of a special meeting of the executive committee of March 10, 1938, and bear Dr. Dardinski's signature. Gov. Ex. 518 are the minutes of a meeting of the executive committee of April 18, 1938, and bear Dr. Dardinski's signature. Gov. Ex. 519 is a roster of the general staff for 1937 and 1938, which I helped prepare. Gov. Ex. 520 is a roster of the executive staff for 1938 and 1939.

Gov. Exs. 515, 516, 517, 518, 519, and 520 were offered in evidence. Defendants objected on the ground that said documents were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 515, 516, 517, 518, 519, and 520 were received in evidence.)

MATTIE M. GIBSON, a witness for the United States.

Direct examination.

By Mr. Allen:

From January 1, 1937, to December 20, 1938, I was superintendent of Children's Hospital. It was the general practice at Children's Hospital to keep minutes of the meetings of the board of directors; of the incorporators and members, and of the medical staff. Gov. Ex. 521 are the minutes of the Board of Directors of Children's Hospital of November 15, 1937, and are signed by Dr. John A. Talbot, secretary. Gov. Ex. 522 are the minutes of the meeting of the incorporators and members of Children's Hospital of September 6, 1937, and bear the signature of Dr. Talbot. Gov. Ex. 523 is signed by Dr. H. A. Ong. Gov. Ex. 524 is a letter or form which doctors not on the staff of the hospital were required to sign, signed by Dr. Scandiffo. Gov. Exs. 525 and 526 are rosters of the staff of Children's Hospital.

Gov. Exs. 521, 522, 523, 524, 525, and 526, as well as Gov. Ex. 527 were offered in evidence. Defendants objected to the documents on the grounds they were incompetent, irrelevant, and immaterial, and hearsay, and objectionable as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 521, 522, 523, 524, 525, 526 and 527 were received in evidence.)

Gov. Exs. 528 and 529 were offered in evidence. Defendants objected to said documents on the grounds that they were incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been proven. The objection was overruled and exception noted.

(Gov. Exs. 528 and 529 were received in evidence.)

Gov. Ex. 492 was described to the jury as a list of the medical staff of Sibley Hospital for 1937, but not read. Gov. Ex. 477 was described to the jury as a list of the medical staff of Sibley Hospital for 1938, but not read.

Gov. Ex. 494 was described by Mr. Lewin as a letter from Dr. Conklin, Secretary, District Medical Society, to Sibley Hospital, dated July 29, 1937, "and its enclosure is the White List of approved persons, which omits the name of Group Health Association, Inc."

Mr. Leahy: You might omit calling it the White List. You objected so strenuously to the term "check off".

Mr. Lewin: You want a little tit for tat. All right.

Gov. Ex. 493, letter to the secretary, District Medical Society, dated August 26, 1937, from L. H. Taylor, President of Sibley Hospital, was read to the jury as follows:

"I wish to acknowledge receipt of your communication of July 29, 1937, relative to the action of the Executive Committee of the Medical Society of the District of Columbia on July 12, 1937, in fulfillment of Chapter IX, Article IV, Section 5 of the Constitution.

I have had this communication placed in the appropriate file of the Hospital and its provisions will be carried out by this institution.

Very sincerely yours,"

Gov. Ex. 495 was described to the jury as a letter from Dr. Conklin, Secretary of the District Medical Society, to the Chief of Staff of Sibley Hospital, dated December 2, 1937, enclosing the resolution of the Society of December 1, 1937.

Gov. Ex. 490, letter dated December 6, 1937, from President, Sibley Memorial Hospital, to Dr. Conklin, Secretary, Medical Society, was read to the jury as follows:

"MY DEAR DOCTOR CONKLIN:

I wish to acknowledge receipt of your letter of December 2, 1937, referring to the action of the Medical Society on December 1, 1937, and also the inclosed resolution. My impression is that membership in the Medical Council of this institution is already on the basis suggested in the resolution. There are no changes in the Council's personnel in contemplation at present, but should such contingency arise, you will know that proper regard will be paid to the wishes expressed in the aforementioned resolution.

With kind personal regards to you, I am

Very sincerely yours, Lewis H. Taylor, M.D., President."

Gov. Ex. 37 was read from to the jury as follows:

Minutes of the executive committee of the District Medical Society for April 11, 1938.

"The defendant Dr. William Mercer Sprigg presided, and there were present Doctors Borden, Chipman, Claud, Fowler, Holden, Hooe, Gill, McGovern, Murphy, Neill, Reed—John A. Reed and E. Hiram Reede—Lomax Wells, and C. B. Conklin.

At this point Dr. F. X. McGovern asked to be heard. He stated that he had, he believed, the proper interests of the Medical profession at heart. He was of the opinion that frequent press releases would be playing into the hands of the Group Health Association. Furthermore, he had attended a luncheon at which Dr. William C. Woodward and Dr. Wright were present, and that Dr. McGovern's action relative to the press had been commended. It was apparent to Dr. McGovern that the Group Health Association, as such, was licked and that it was a very small affair compared with the much larger, national in scope, movement that was now under way. He did believe that for these reasons certain proposals by Mr. Fulton Lewis, Jr., were made without sufficient knowledge of the full implications. . . .

Dr. McGovern was recognized and said it was plain that the questions that Dr. Hooe had propounded to Mr. Lewis came from Mr. Lewis and that he wanted to make it plain that he believed the Group Health Association was now



nothing but a bubble. He cited what he succeeded in getting in the press personally, ending by saying that since The Post printed an editorial inspired by him (Dr. McGovern) Mr. Kirkpatrick hasn't opened his mouth. He resented strongly his being on trial, which it was very plain that he was.

Dr. Hooe was recognized. He stated that he had not made any plea for Mr. Fulton Lewis' services tonight—just presenting facts. He added that he had another very important matter to bring before the committee—that was relative to the hospitals. He thought that a meeting should be arranged in the Medical Society Building, to which would be invited the official representatives of the various hospitals. He stated that the hospitals had been cooperative. He thought that the Society should get representatives all together, with view to expressing appreciation and standardizing action against the Group Health Association group physicians.

Dr. Hooe would make a motion that the Chairman of the Executive Committee be authorized and directed to appoint a committee, consisting of many members, including such doctors as Drs. A. C. Christie, F. X. McGovern, W. M. Sprigg, Sterling Ruffin and others, to perfect arrangements and conduct the meeting.

The secretary offered an amendment to the effect that the Compensation, Contract and Industrial Medicine Committee, with certain supplementary additions, operate the meeting. Dr. Hooe thought his original plan was to be preferred.

The motion as originally made was seconded and adopted."

Minutes of the meeting of the Medical Society of the District of Columbia, May 11, 1938, were read from to the jury as follows:

"Dr. Thomas E. Neill, president, presiding.

Present: Drs. Vaughan, Prentiss, Trinder, Elward, Fong, Talbot, Reede, Alfaro, Thompson, Gwynn, Rensch, Thomas, Barry, Mallory, Leonard, Foye, Arnold, King, Fowler, Christie, Clark, and other members to the number of about 460.

The minutes of the preceding meetings held April 27 and May 4 were read and approved. . . .

Dr. R. Arthur Hooe was recognized. He made a motion to the effect that the Medical Society of the District of Columbia go on record as forbidding its members to receive monies or checks for services rendered to beneficiaries of Group Health Association, Inc., from or over the signature of Group Health Association, Inc., or its agencies and so notify the membership of the Medical Society.

Dr. Hooe was confident that the Legal Department of the American Medical Association would render an opinion consistent with the motion. He said he had conferred with counsel for the Society and upon request read a communication that had been addressed to the Secretary, as follows:

May 10, 1938.

Dr. C. B. Conklin, Secretary, Medical Society, D. C., 1718 M St., N. W., Washington, D. C.

DEAR DR. CONKLIN:

Mr. George P. Hoover tells me that he has received from Dr. Hooe a request for information which it is understood is desired by the Medical Society, namely, as to whether members of the Society should accept payment for services rendered members of Group Health Association.

Mr. Hoover, Mr. Leahy and I have considered the subject and it is our advice that members of the Medical Society should not accept any payments whatsoever from Group Health Association and should issue no receipts in favor of said Association; and that with respect to treatment rendered patients who happen to be members of Group Health Association, the physician who renders the treatment can accept payments made directly by the patients.

Very truly yours, F. A. Fenning.

Dr. C. B. Conklin made a motion that this matter be referred to the Executive Committee for consideration and report. No second to this motion.

Dr. W. Raymond Thomas made a motion that the matter be laid on the table. Seconded and not adopted.

Dr. Hooe restated his motion to the effect that the Medical Society of the District of Columbia go on record as forbidding its members to receive monies or checks for services rendered to beneficiaries of Group Health Association,

from or over the signature of Group Health Association, Inc., or its agencies and so notify the membership of the Medical Society. Seconded and finally adopted."

Ex. 417, letter from Dr. Lewis H. Taylor, President, Sibley Hospital, to William C. Kirkpatrick, President, Group Health Association, dated February 5, 1938, was read to the jury as follows:

MY DEAR MR. KIRKPATRICK:

I am returning you herewith a check of the Group Health Association for \$66.80 on which there is a notation 'Hospitalization for Miss Tommie Lee Nix.' This check was evidently sent to us by mistake. As you are aware from correspondence between your predecessor, Mr. William F. Pennington and myself, as President of Sibley Memorial Hospital, the application of Group Health Association to this institution for the admission of its members is still under advisement. The Board of Directors of this institution have arrived at no conclusion in the matter and pending their decision, of course, none of your Group, as such, are eligible for hospital privileges here.

For your information, I may state that Miss Tommie Lee Nix on December 24, 1937, was admitted to this Hospital as the service of Dr. Rush Conklin. Later, she was transferred to the service of Dr. A. B. Little, and was then operated on by Dr. Oliver Cox. On her admission card, responsibility for her bill is assumed by and over the signature of James R. Nix, 2900 Seventeenth Street, N. E., and we look to this gentleman or the patient, Miss Tommie Lee Nix, for the settlement of her account.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Ex. 491, memorandum to admission office, accounting department, from Lewis H. Taylor, President, Sibley Hospital, dated February 8, 1938, was read to the jury as follows:

"Please use every precaution to see that no patient is admitted as a member of the Group Health Association, Inc., of the Home Owners' Loan Corporation. Also, that all bills in payment of service rendered patients be scrutinized closely to see that they are not made out by this organization. The reason for this memorandum is that Group

Health Association, Inc. has applied for the privilege of having their members admitted to this Hospital and that their application is still pending and has not been acted on by the Local Board of Directors."

Gov. Ex. 496, handwriting memorandum, was read to the jury as follows:

"Group Health Association, H. O. L. C.

Dr. Henry Brown, Director,

Dr. Raymond Selders, Surgeon

Dr. Allen Lee

Dr. Edmund Wells

Dr. Stephen Hulburt

Dr. M. Scandiffio

These doctors are not to be allowed in at any time.

L. Welch

Beulah Mumford

H. K. Dutton

L. A. Wood

J. Jensey

M. M. Realine."

Gov. Ex. 418, letter, Mr. Kirkpatrick to Dr. Taylor, dated February 18, 1938, was read to the jury as follows:

"MY DEAR DR. TAYLOR:

I am in receipt of your letter of February 5, 1938, with which you return a check issued by Group Health Association, Inc., bearing number 247, in the amount of \$66.80, to the order of Sibley Memorial Hospital. This check is in payment of a bill dated January 5, 1938, rendered by your hospital for services rendered to Miss Tommie Lee Nix, a member of this Association, while confined in your hospital from December 24 to December 31, 1937.

In your letter you state that the check was evidently sent to you in error and refer to the fact that on the stub of the check there is a notation which reads 'hospitalization for Miss Tommie Lee Nix.' We wish to advise there was no mistake on our part in transmitting the check in question. Under provisions of the by-laws of Group Health Association, Inc., Miss Nix is entitled to have provided to her hospitalization when such is necessary. Miss Nix having received hospitalization in your institution for the dates mentioned is therefore entitled to have the cost of that hospi-

talization paid for by Group Health Association, Inc. Your attention is invited to the fact that the stub which contains the notation referred to is not in any sense a part of the body of the check. The stub is provided only for information of the payee as to what the check is intended to cover. In depositing the check, if you so choose, the stub of course may be detached before the check is deposited. We are, therefore, returning the check herewith and ask that it be deposited in the usual course.

In the first paragraph of your letter you state that application of this Association to admit its members to your hospital is yet under advisement by your Board of Directors and that until a conclusion is reached, members of Group Health Association, Inc., are not entitled to receive the privileges of your hospital. I gather from your letter that because patients may be members of Group Health Association, Inc., they are by that fact not entitled to be treated at Sibley Memorial Hospital until such time as your Board has approved their admission as such members. It is difficult for us to appreciate this conclusion. We understand that hospitals in the District of Columbia are maintained for the service of members of the community and that those comprising the community may enjoy the privileges of treatment at those hospitals when necessary and that membership in Group Health Association, Inc., could hardly be regarded as a reason for denying such persons admission to your hospital when such is necessary. I do not believe that the Methodist Episcopal Church, which we understand is the owner of Sibley Memorial Hospital, would approve such a policy.

We can well understand that admission to your courtesy staff of any member of the staff of physicians of Group Health Association, Inc., is entirely within the discretion of the authorities of your hospital and that you have every right to insist that any physician or surgeon admitted to courtesy privileges in your hospital should first establish beyond all doubt the fact that he is in every respect qualified for admission to the courtesy staff. We can not, however, comprehend that citizens of the District of Columbia when in need of treatment at your hospital should be denied that privilege merely because they are members of this Association.

Very sincerely yours,"



Gov. Ex. 419, reply of Sibley Hospital dated February 21, 1938, was read to the jury as follows:

"MY DEAR MR. KIRKPATRICK:

I wish to acknowledge receipt of your letter of February 18, 1938, addressed to me as President of Sibley Memorial Hospital and returning to me a check, numbered 247, issued by the Group Health Association, Inc., in the amount of \$66.80, said check made to the order of Sibley Memorial Hospital and dated January 17, 1938; the purpose of this check as indicated on its stub, 'Hospitalization for Miss Tommie Lee Nix.'

Miss Tommie Lee Nix was admitted to the Hospital on the service of Dr. Rush Conklin on December 24, 1937. Miss Nix signed her own card of admission on which appears the name of her brother, James R. Nix, 2900 17th Street, N. E., who assumed responsibility for the payment of her bill while in this institution. On her admission card appears no reference whatsoever to the Group Health Association, Inc. It should be apparent that pending the decision of the Local Board of Directors of Sibley Memorial Hospital, who are considering the request of your Association, the institution would not receive your members as such. This Hospital is open to citizens of the District of Columbia and the surrounding country and has been since the foundation over forty years ago. The fact that an individual is a member of any organization, yours or otherwise, has nothing to do with entry to Sibley Hospital. I am therefore, returning your check, #247. We confidently expect and know that Miss Nix or her brother who signed responsibility for her bill, will settle this account.

Very sincerely yours, Lewis H. Taylor, M. D., President."

Gov. Ex. 420, letter from R. T. Berry, Secretary-Treasurer, Group Health Association, Inc., to Dr. Lewis H. Taylor, President, Sibley Hospital, dated March 30, 1938, was read to the jury as follows:

"DEAR MR. TAYLOR:

We have again received our check #247 in the sum of \$66.80, drawn to your order for hospitalization incurred by Miss Tommie Lee Nix.

We regret that you seem to be unable to accept payment for an apparent just debt. We wish to inform you that the

expense so incurred by Miss Nix is payable by this association and any delinquency in payment as may appear on your records is due entirely to the fact that this check has not been accepted and we wish you to understand that the credit standing of Miss Nix in the District of Columbia or elsewhere is not to be affected in any way, pending your decision as to whether or not you will definitely decline or accept this check.

When you wish payment, kindly notify this office and we will again forward you the check to clear your records.

Very truly yours,"

Gov. Ex. 421, letter, Lewis H. Taylor, President, Sibley Hospital, to Mr. Kirkpatrick, President, Group Health Association, was read to the jury as follows:

"June 20, 1938.

MY DEAR MR. KIRKPATRICK:

I am returning to you herewith, a check of the Group Health Association, numbered 931, in the amount of \$31.00 on which there is a notation 'for board, drugs, and laboratory service, Miss Taylor Owen.'

Miss Taylor Owen was admitted to Sibley Hospital on May 23, 1938, on the service of her physician, Dr. A. McNitt. On her admission record, responsibility for her account was assumed by her sister, Miss Moss Owen.

Similar action was taken in the case of Miss Tommie Lee Nix and the reasons therefor were plainly stated in correspondence between you and myself and may be found in my letters to you.

The Local Board of Directors have arrived at no decision in the matter of the application of Group Health Association for certain privileges in Sibley Memorial Hospital. I will communicate to you promptly any action which they may take in the matter.

Very sincerely yours,"

Gov. Ex. 422, Mr. Kirkpatrick's reply to Dr. Lewis H. Taylor, dated August 5, 1938, was read to the jury as follows:

"DEAR MR. TAYLOR:

This will acknowledge receipt of your letter of June 20, 1938, with which you return our check #931 in the amount

of \$31.00 for Board, Drugs and Laboratory Service to Miss Taylor Owen, a member of Group Health Association, Inc. The check in question is returned herewith together with a request signed by Miss Owen that you accept the check as tendered.

Very truly yours,"

"DEAR SIRs:

This is to advise you that Group Health Association, Inc., has been by me requested to make payment to you of the indebtedness due you of \$31.00 arising out of your recent services to Miss Taylor Owen.

If, for any reason you do not accept the tendered payment, you will kindly advise Group Health Association, Inc. the basis of your refusal as I expect to leave settlement of this indebtedness entirely with the Association, and have given it full authority to act for me in the premises."

Gov. Ex. 423, reply of President of Sibley Memorial Hospital on August 12, 1938, to above letter, was read to the jury as follows:

"MY DEAR MISS OWEN:

Receipt is acknowledged of your letter of August 5, 1938, enclosing check of Group Health Association No. 931, in the amount of \$31, payable to the order of Sibley Memorial Hospital. Said check is returned to you herewith.

It is requested that you pay the amount of your indebtedness to this hospital in cash.

Yours very truly, Lewis H. Taylor, M. D., President."

Gov. Ex. 424, Mr. Kirkpatrick's letter dated August 26, 1938, was read to the jury as follows:

"DEAR MR. TAYLOR:

This will refer to your letter of August 12, 1938, addressed to Miss Taylor Owen, 2019 Eye Street, N. W., Washington, D. C.; which letter has been referred to the writer for attention by Miss Owen.

Miss Owen has previously notified you that this Association is acting in her behalf with respect to the hospital bill amounting to \$31.00 due you.

You will find enclosed our check #931, which was previously forwarded to you and which was returned with your

letter to Miss Owen, now duly certified by the Riggs National Bank.

If for any reason you do not see fit to accept this certified check, advice as to the basis of your refusing to do so will be appreciated.

You can readily understand the considerable trouble which would be involved in making a formal legal tender in cash to you of the amount in question. I feel certain that your attitude will not be such as to require us to resort to this extremity.

Very truly yours,"

Gov. Ex. 425, reply of Dr. Lewis H. Taylor on August 30, 1938, to above letter, was read to the jury as follows:

"DEAR MISS OWEN:

Receipt is acknowledged of a letter of Group Health Association dated August 26, 1938, with the enclosure being a certified check in the amount of \$31.00 therein referred to. Said letter purports to have been sent in your behalf.

The check is returned to you herewith, with the request, as previously made in our letter addressed to you under date of August 12, 1938, that you pay the amount of your indebtedness to this Hospital in cash.

Very truly yours,"

Gov. Ex. 426 was described to the jury as a somewhat similar letter from Dr. Lewis H. Taylor, President of the Sibley Memorial Hospital, to Mr. Howard F. Vickery in regard to refusing payment of Group Health's check for this account dated August 2, 1938, not read to the jury.

Gov. Ex. 427 was described to the jury as a letter of Mr. Kirkpatrick in regard to the Howard Vickery case, enclosing the authorization of Mr. Vickery to the Sibley Hospital to accept check, not read to the jury.

Gov. Ex. 429 was described to the jury as Mr. Kirkpatrick's letter to Sibley Hospital dated August 13, 1938, not read to the jury.

Gov. Ex. 430 was described to the jury as the last word in this series of letters, dated August 30, 1938, from Dr. Taylor to Mr. Howard Vickery, finally refusing a certain check and demanding cash; not read to the jury.

Gov. Ex. 507 was read from to the jury as follows:

"Minutes of meeting of the Executive Committee of Columbia Hospital, dated December 2, 1937:

(b) The Hospital Committee of the Medical Society of the District of Columbia has recommended to the Society that all members of the staffs of all hospitals in the District be asked to join the Medical Society of the District or the American Medical Association, but the District Medical Society has not yet acted upon the recommendation."

. . . . .

"The Superintendent reported correspondence with the Group Health Association within the Home Owner's Loan Corporation, indicating, on the part of the Association, a desire to have its members accepted for hospitalization at customary rates, and that Dr. Selders, one of its employees, be allowed to treat such members when hospitalized here. The Superintendent had replied that the hospital would doubtless be willing to accept members of the Association at the customary rates, but that no physician could practice here until appointed to either the regular or courtesy staff by the Board of Directors. Following this, Dr. Selders made application in Classes 1, 2 and 3, which application is now under consideration by a committee appointed within the Medical Board, because the application did not show the special training and large experience in Obstetrics and Gynecology which are usually demanded of applicants for privileges in Classes 1 and 2.

The Superintendent further reported a visit from Mr. Penniman of the Home Owner's Loan Corp., who explained the objective of the cooperative society and expressed a desire to work in the closest harmony with physicians and hospitals, stated that the cooperative society expects to pay but \$4.00 per day toward the hospital expenses of its members and that those members must themselves pay any additional charges. He asked that pending action upon Dr. Selders' application for privileges, temporary approval be granted him in case of emergency work or obstetrics. The Superintendent informed Mr. Penniman that privileges would be granted for cases of normal obstetrics pending the decision.

Dr. Sprigg, a representative of the Medical Board, counseled delay in action upon both the requests made by the Group Health Association and Dr. Selders pending legal decision at present being sought in regard to the Association, and that meanwhile emergency cases requiring hospitalization be accepted as a measure of humanity. The Su-



perintendent asked if the Committee had any instructions as to how he should proceed in case of request for admission of patients and was advised, upon motion of Mr. Blair, that action in such cases be left to his judgment. Mr. Lesh then stated that, if it were true, he thought that it should be made a matter of record that the Superintendent's action and the proposals now made meet with the approval of the Medical Staff and, upon assurance by Dr. Sprigg that such is the case, it was decided to make a record of the fact."

Gov. Ex. 508 was read from to the jury as follows:

"Minutes of the meeting of the board of directors of Columbia Hospital of September 21, 1938:

The Medical Board reported as follows on the applications for courtesy privileges:

Dr. Raymond E. Selders, Classes 1 and 3, the Medical Board informs the Board of Directors that it considers it inadvisable to act at this time on the application of Dr. Selders.

• • • The Superintendent reported 'Group Health has asked for the granting of privileges to its doctors. Captain Wells had informed them that action might be taken at this meeting. The action on Dr. Selders' application indicated above is the answer.' "

Gov. Ex. 512 was read from to the jury as follows:

"Minutes of the Medical Board of Columbia Hospital of December 9, 1938:

The following applications for hospital privileges were considered. Dr. Clark P. Halstead, Class 3, postponed pending further information."

Gov. Ex. 511 was read from to the jury as follows:

"Minutes of the Medical Board of Columbia Hospital for September 19, 1938:

Dr. Sprigg moves to consider the application of Dr. Selders for privileges in Classes 1 and 3, and that he not be endorsed for the privileges. This was seconded by Dr. Mundell and discussed by Doctors Sprigg, Wilson, Sylvester, McNitt, Mundell and Copeland, after which, Dr. Wilson

moved that the following be substituted for Dr. Sprigg's motion:

'That the Medical Board inform the Board of Directors that it considers it inadvisable to act at this time on the application of Dr. Selders.'

This was seconded by Dr. Sylvester and was carried by five to two. Dr. Wilson then moved the adoption of his substitute. Dr. Sylvester seconded the motion and it was passed by a vote of five to two."

Gov. Ex. 514 was described to the jury as a letter of Dr. Conklin dated July 29, 1937, to the Superintendent of Columbia Hospital, enclosing the list of organizations approved by the Medical Society, not read to the jury.

Gov. Ex. 515 was described to the jury as a letter from Dr. Conklin to the Chief of Staff of Columbia Hospital, dated December 2, 1937, enclosing the resolution of the Medical Society of December 1, 1937; not read to the jury.

Gov. Ex. 440-A, letter from Sister M. Rodriguez to C. B. Conklin, Secretary, Medical Society of the District of Columbia, dated December 7, 1937, was read to the jury as follows:

"MY DEAR DR. CONKLIN:

I am in receipt of the copy of the Resolution adopted by the Medical Society of the District of Columbia.

It gives me pleasure to state that the Executive Staff of the Georgetown University Hospital, in session on October 11, 1937, acting on the recommendation of the American Medical Association concerning the approval of Residencies and Internships ruled as follows:

That all members to the Courtesy Staff shall be nominated and elected annually and that no physician shall be nominated or elected to any staff of the hospital unless he is a member of his local or County Medical Society and of the American Medical Association. Members who are already on the staffs, as well as those who are applying for privileges to practice in the hospital, shall be notified to qualify within the year.

Thanking you for past courtesies, I am

Sincerely yours, Sister Mary Rodriguez, Superintendent."

Gov. Ex. 516, minutes of the special meeting of the Executive Committee on hospital administration of Georgetown University Hospital held January 20, 1938, was read from to the jury as follows:

**"Special Meeting of the Executive Committee on Hospital Administration.**

Special Meeting of the Executive Staff was held January 20, 1938, at 4:00 p. m. in the staff room of the hospital, Father McCauley presiding.

Those present were Drs. Coe, Martel, Whitmore, Vaughan, Koppanyi, Mollari, Cavanaugh, Cahill, Zolnitsky, Milone, Mundell, Stanton, Duehring and Dardinski.

Sister Rodriguez presented the case for consideration which concerned a patient admitted from the H. O. L. C. The question to be decided:

1. was the patient now (after 48 hours) to be considered an emergency case.

2. would Dr. Selders be allowed to treat the case in spite of the fact that his credentials had not yet been approved.

Dr. Vaughan felt that the case was no longer an emergency and that Dr. Selders should not be allowed to continue with the case.

Dr. Coe said the case must be taken care of and that he had been in consultation with Dr. Selders on the case and had advised him to have orthopedic consultation.

Dr. Cahill thought we should take action, since we had no report from the Washington Academy of Surgery we should act ourselves. He said Dr. Selders is not qualified and a case is no longer an emergency after 48 hours.

Dr. Martel thought that Mr. Penniman was pressing Sister on a good opportunity. Being an emergency case Sister consulted with Drs. Coe, Martel, Duehring and Dardinski. All agree to admit patient as emergency. Now we must consider is the case still emergency. If patient is moved what would be the consequences. Furthermore Dr. Selders says he doesn't care who treats the patient but patient must pay doctor. They will not.

Dr. Stanton said that Dr. Coe had suggested treatment and Dr. Selders is not taking advice. Best interests of patient to be considered first. Case is no longer an emergency.

Dr. Coe thought that Dr. Selders can do it only with consultation of staff member.

Dr. Martel moved that Dr. Selders be informed case ceases to be an emergency and should cease treating case.

Dr. Vaughan again stated that case was not an emergency. The case now could wait a week. Dr. Selders has no right to handle case and now it becomes hospital case. He should not be allowed to operate but courtesy of being present when man operates should be extended to Dr. Selders.

Dr. Coe described the operation.

Dr. Mundell thought there were many angles to the case and expressed himself in favor of allowing Dr. Selders to go on with the case.

Dr. Koppanyi suggested we defer action until we see what other hospitals do.

Dr. Duehring felt that cases should be treated by Dr. Selders to avoid trouble.

Dr. Vaughan does not agree with Drs. Duehring, Koppanyi and others in favor of allowing Dr. Selders to continue with case.

The original motion of Dr. Martel's withdrawn. Dr. Martel moved that emergency no longer exists.

Passed 5 no, 10 yes.

Sister Rodriguez moved that although permission was given to treat the case now that the case has become operative it must be done under supervision of one of our approved orthopedic surgeons according to the rules of the hospital.

Passed unanimously.

Dr. Cahill moved that surgical privileges be withdrawn from Dr. Damian. Dr. Coe seconded. Passed unanimously.

Motion made to adjourn.

Signed: V. J. Dardinski, M. D., Secretary."

Gov. Ex. 517, minutes of a special meeting of the Executive Committee on hospital administration, held March 10, 1938, Georgetown Hospital, were read to the jury as follows:

"Special Meeting of the Executive Committee on Hospital Administration.

A special meeting of the Executive Staff was held Thursday, March 10th, at 12 noon. Father McCauley presiding.

Those present were Sister Rodriguez, Drs. Hird, Vaughan, Martel, Koppanyi, Cavanaugh, Mollari, Wall,

Milone, Solnitzky, Duehring, Cahill, Coe Mundell, Cutting, and Dardinski.

Subject for consideration was the letter sent out by the Group Health Organization, Inc. inviting members of the hospital staff to attend meeting which was to be held Friday, March 12.

This letter was read by Father McCauley.

Dr. Coe read a motion which after suggestions and amendments by Drs. Hird, Wall and Duehring finally read as follows:

The Executive Staff appointed Dr. Duehring to represent the Georgetown University Hospital in an informal capacity at the Group Health Association meeting with the following instructions, which he is at liberty to use or ignore.

1. The Georgetown University Hospital will grant privileges to practice to any doctor whose qualifications are such as are deemed sufficient by the credentials committee of the hospital to practice his specialty.

2. Any patient who is a member of the Group Health Association applying to the Georgetown University Hospital for treatment of any nature will be admitted to the hospital and cared for by the doctor of his choice if said doctor is a member of the staff, or by a designated member of the staff.

This was seconded and adopted.

Dr. Duehring said he believed the group should be informed that the hospitals of this city are more open than hospitals in the New England States which are closed to all except those on the staff.

Dr. Koppanyi said we should tell them frankly that hospitals cannot be coerced into taking men that were not qualified.

Dr. Martel said that Dr. Scandiffio is qualified. He has done something we do not approve and that probably that is what they would like to have someone say. Dr. Martel felt that we should not send a representative.

Dr. Cahill said we could not ignore the letter. Providence Hospital is sending representative. Thought sending a letter would be better explaining we will be glad to take patients but men must be approved.

Dr. Duehring moved that a representative be sent to speak informally. Seconded by Dr. Mollari.



Dr. Coe thought that speaker might refer to the compensation commission work and suggest that the group health organization, inc. workings might be run along the same lines.

Father McCauley asked Dr. Martel to go as representative but he declined for reasons of his own. Dr. Duehring was asked to go and accepted.

Sister Rodriguez felt that a letter should be taken along with definite statements to be read.

Dr. Vaughan thought that a letter should be taken and used if necessary.

This was finally done.

Moved to adjourn at 12:30 p. m.

Signed: V. J. Dardinski, M. D., Secretary."

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R. STEPHEN HULBURT, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a general practitioner. I received my medical degree from Georgetown University in 1931. My academic schooling was completed in 1929. I entered private practice in Washington and was clinical instructor in medicine in the out-patient department of Georgetown from 1932 to about 1937. My duties were to take care of medical patients in the dispensary and advise students in their work. I think I had the privilege of bringing my own patients and treating them in Georgetown Hospital, but I didn't apply by formal application, and it was about two years before they requested me to fill out a formal application blank, which I did in 1935. I was notified formally that I had privileges for general medicine, normal obstetrics, and minor surgery.

In 1937 I joined the staff of Group Health as an assistant to Dr. Lee. I was with Group Health at the time their clinic opened. Gretchen Móriarity was one of the members of Group Health whose case I handled early in 1938. I visited her at Georgetown Hospital on April 7, 1938, and she was in labor and I gave her the necessary examination and went back to the clinic.

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After she called me, I called the Georgetown University Hospital and believe I talked with the girl in the admitting office.

Q. And whom did you talk to at the Hospital?

A. I asked for the admitting office and talked with the girl in the office.

Q. And did you ask permission to bring Mrs. Moriarity in?

A. I did.

Q. And what did the admitting office say?

Mr. Leahy: I object to that; it is hearsay.

Mr. Lewin: Falls under the same ruling your Honor has made.

Mr. Kelleher: I will also connect it up with the Superintendent.

Q. Did you speak directly with the admitting office? Did you ask for the admitting office?

A. I asked for the admitting office, and I believe I was connected with it.

The Court: While you were connected with the hospital you talked on the phone?

The Witness: Yes.

The Court: Overruled.

The Witness: Do you wish me to answer that question?

Mr. Kelleher: Yes.

The Witness: I talked with the girl in the office and told I was Dr. Hulburt, connected with Group Health, and had this obstetrics case in active labor. I would like have her admitted as an obstetrics case; she needed vitalization.

And what did the clerk in the admitting office say?

She said she didn't know whether there was any money, but she would find out, and I think she inquired Sister James Joseph.

Q. And who was Sister James Joseph?

A. She was the Sister in charge of the office.

Q. What was the conversation you had with her?

Mr. Leahy: The same objection.

The Court: Overruled.

Mr. Leahy: Exception noted.

A. I asked her to admit this patient. I told her I wanted her to admit this patient; that she had a history of having

previous children who were delivered very quickly, and her membranes were already ruptured; and I thought she should be in the hospital where she could be under observation.

Q. And what did Sister Joseph say?

A. She just asked me to wait a minute; she would take it up with Sister Rodriguez.

Q. Did she make any suggestion as to who should handle Mrs. Moriarity in the hospital if she was admitted?

A. I don't recall.

Q. Did she say anything about the patient being treated as a house patient?

A. She may have; I don't recall that especially; she may have said that.

Q. What is a house patient?

A. A patient who comes in and who is under the treatment of the physician in charge of that service in the hospital.

Q. I believe you already testified that she said she would speak to Sister Rodriguez?

A. Yes.

Q. Who is Sister Rodriguez?

A. She was the Superintendent of the Hospital at that time.

Q. Did you wait at the phone while she did that?

A. I did.

Q. And did Sister Joseph return to the phone?

A. Yes.

Q. What did she say at that time?

A. She said, Sister Rodriguez said it would be all right to admit her as an emergency patient; that they would never turn down any case that needed help.

I sent Mrs. Moriarity to the hospital, and I saw her in the first stage room. I went to Georgetown about 1 o'clock, examined her, found she was not having pain, and that the labor was not as fast as I anticipated. I went back to the clinic and at 5 o'clock I received a call to come to Georgetown, but as traffic was heavy I didn't get there until 5:30. When I arrived, the nurses told me that Mrs. Moriarity's baby had been delivered without pain. I examined her, found her all right. The nurse then said that Sister Rodriguez wished to speak to me. Sister Rodriguez told me she was glad to admit the patient as

an emergency case as they would never think of not allowing anyone to come into the hospital that they thought could be helped there, but I should realize that I no longer had privileges there. I replied that I didn't know that; I had not been notified to that effect, but I didn't care to argue or remonstrate, so I told her I was sorry, and went on.

On April 25, 1938, I resigned from Group Health. I made formal application for privileges at Georgetown, which were granted. Gov. Ex. 530 is the letter I received from Georgetown.

Gov. Ex. 530 was offered in evidence. Defendants objected on the grounds that the letter was incompetent, irrelevant, and immaterial, and hearsay, and that no conspiracy had been proven. The objection was overruled and exception noted.

Gov. Ex. 530 was received in evidence and read to the jury as follows:

"May 12, 1938.

MY DEAR DR. HULBURT:

Your application to practice at the Georgetown University has been approved by the Credentials Committee.

You have been granted privileges to practice in branches of medicine checked with the understanding that you become a member of your local medical society within the year."

And there is a check mark next to "Minor Surgery," "Medicine," and "Obstetrics, normal."

"Very sincerely yours, Sister Mary Rodriguez,  
Superintendent."

I don't recall while I was with Group Health that I applied for privileges at Columbia. I don't believe I had privileges at Columbia Hospital while with Group Health. After resigning from Group Health I obtained privileges at Columbia.

Cross-examination.

By Mr. Leahy:

I don't recall that I ever made application for privileges at Columbia Hospital before I went to Group Health. It is the general procedure in any of the hospitals in Washington to make application for privileges. I don't remember making such an application to Columbia while or before

I went with Group Health. When I did make application I followed the general routine and filed an application for privileges in local hospitals and I received privileges. In 1938 I received privileges, some time after I resigned from Group Health on April 25.

When I went with Group Health I understood it was to be part-time, but before I had been there very long it developed into full-time. The reason being the demand was great and there was just so much work there wasn't any time to do anything else. I did clinical hours from 9 to 1, made the calls from 1 to 3, and from 3 to 6 was in the clinic. My understanding was, which first interested me, that I was going to help Dr. Lee as an assistant in internal medicine. Before I got through I was doing other things because the pressure of work was so great, so varied, I was doing a great many things. I resigned from Group Health in April, 1938, for many reasons that had been going over in my mind for many months before I made my decision. I had gone to Group Health with the idea: I had heard Dr. Lee describe it as going into a new organization which would provide better medical practice, and it would build up to be comparable to the Ross-Loos Clinic in Los Angeles, and, perhaps, even the Mayo Clinic. That I would go in as an assistant and be associated with men of national reputation, and I thought it would be of professional advantage to do that; I went in on that basis. For the first month it worked very well. There weren't so many people coming in. But by the middle of December the volume worked up, had become so great that I was doing work from early morning until late at night—full-time work and over. The reason why I left Group Health was because after my experience with the clinic I found I couldn't do good medical service because of the stress of work laid on me.

#### 4 Redirect examination.

I came to Group Health to be Dr. Lee's assistant. Dr. Lee resigned in December, 1937. It was before the middle of December that my duties increased. They were increasing every day, even before Dr. Lee resigned. They were substantially increased after he resigned. They were heavy during the period when Dr. Lee resigned and Group Health obtained Dr. Price. The fact that I was excluded from Georgetown University Hospital did not influence me materially in my decision to resign from Group Health but it



did influence my wife. I am a member of the Medical Society now. The summer after I resigned from Group Health I filed my application, and it was acted on in November, 1938.

Gov. Ex. 509 was read from to the jury as follows:

"Minutes of Meeting of April 14, 1938 of the Board of Columbia Hospital (Excerpt)

The application of R. Stephen Hulburt for privileges was tabled."

Gov. Ex. 510 was read from to the jury as follows:

"Minutes of the meeting of June 9, 1938, of the board of Columbia Hospital.

"The following applications for courtesy privileges were considered:

R. Stephen Hulburt was approved.'"

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FRANCIS X. RICHARDSON, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am a doctor of medicine, licensed to practice in the District of Columbia. I was licensed in 1938. I was trained at George Washington University Hospital. I interned at Providence Hospital. In 1937 I resided in Takoma Park, Maryland, and was then a member of the American Medical Association's constituent society in Maryland which is the Medical and Chirological Faculty of the State of Maryland.

In December, 1937, I joined the staff of Group Health, when asked by a man by the name of George McDuffy if I was available for outside calls. I went to see Dr. Brown and, as a result, joined the staff for outside calls. I am a general practitioner. I was to receive a salary of \$150 per month for outside calls and 4 cents a mile for mileage. This was part-time work. I continued to do this work for Group Health until I resigned on July 15, 1938. Originally I was to do work at Takoma Park; and then I took calls in the District, and my compensation was raised to \$200 per month. I had a conversation with Dr. McNulty and Dr.

Jesse Mann in the cloakroom at Sibley Hospital. I have staff privileges at Sibley and had them in 1937 and 1938, and I had privileges at Garfield and Providence Hospitals also. I had this conversation while attending a private patient at Sibley Hospital; I never had any Group Health patients in any hospital.

Gov. Ex. 531 bears my signature. ©

Gov. Ex. 531 was offered in evidence. Defendants objected on the grounds it was incompetent, irrelevant, and immaterial, and hearsay, as no conspiracy had been shown. The objection was overruled, exception was noted.

Gov. Ex. 531 was received in evidence and read to the jury as follows:

"Dr. R. E. Selders, Medical Director, Group Health Association, Washington, D. C.

DEAR DR. SELDERS:

This is to advise you that upon receiving this letter I shall be no longer available to accept calls for Group Health Association.

Sincerely yours, Francis X. Richardson, M. D."

I wrote and sent this letter, Gov. Ex. 531, after I had this talk in the cloakroom in Sibley Hospital with Drs. Mann and McNulty.

Cross-examination.

By Mr. Leahy:

I started practicing medicine in July, 1934, when I finished my internship at Providence Hospital. I was first employed at the rate of \$150 a month at Group Health Association, and later, in February, Group Health increased my compensation to \$200 a month. From February on Group Health Association employed me at \$200 a month.

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WILLIAM C. KIRKPATRICK, a witness for the United States.

Further direct examination.

By Mr. Lewin:

I drew cash and, in one instance, I gave it to my secretary and in another instance I gave it to one of the patients, and

in a third instance I directed and our bookkeeper took it to Sibley Hospital for the final payment of the hospitalization bills of Tommie Lee Nix, Howard Vickery, and Miss Taylor Owen. The money came from the treasury of Group Health. I recall a few instances when Group Health paid members of the District Medical Society for services rendered to Group Health patients. In one instance I paid cash to Dr. J. Ogle Warfield.

In August, 1938, or earlier, I had a conversation with Major Gist Blair, President of Emergency Hospital, for the purpose of having members of our staff admitted to that hospital.

“Question: Tell us what the conversation was.”

The question was objected to on the grounds of incompetency, irrelevancy, and immateriality, that no conspiracy had been shown; that it called for hearsay, and that the other party to the conversation was dead. The objection was overruled and exception allowed.

The Witness: We met in the office of Major Blair in the Emergency Hospital. Present at that conference was Major Blair, Mr. Sandidge, the superintendent of the hospital, and Dr. Mitchell, who, as I understood, was chief of the surgical staff. Accompanying me was Mr. Horace Russell, a member of the Board of Directors and General Counsel for the Federal Home Loan Bank Board. We stated the purpose of our visit there, namely to see whether we could enter into an arrangement whereby doctors of Group Health could make application to Emergency Hospital and be admitted to courtesy privileges, provided their qualifications were proper.

We found Major Blair very cooperative. He made the statement that he was in sympathy with what we were trying to do, and he made the statement that he thought there was a place in the medical field for group practice of medicine.

Mr. Sandidge contributed nothing to the meeting. He didn't say a word. Dr. Mitchell said very little more. After some discussion of perhaps 20 minutes or a half an hour, they spoke of getting our staff in there. Major Blair volunteered that he would do what he could among his acquaintances in the other hospitals and among the medical fraternity in the District to see whether or not this question might not be resolved in favor of Group Health to the end

that we be admitted to that hospital, but he offered the information that it was part of the by-laws of that hospital that any physician on the courtesy staff must by reason of that fact be a member of the District Medical Committee, and we told Mr. Blair that none of our doctors at that time were such. He said that he would communicate with us in writing when and if he was successful in obtaining any information that he thought might be helpful or favorable to us, and at the end expressed his interest in this thing and his sympathy with it, and with that the meeting ended.

Q. Were you asking for the admission of any particular doctor on Group Health staff or all the doctors?

A. We didn't name anybody at all. We asked for the staff as a whole. We said "our doctors". That is the way we put it.

Q. That is a pretty full statement of what transpired there?

A. I think that describes the meeting, Mr. Lewin.

Following the interview Mr. Russell wrote a letter to Major Blair (Gov. Ex. 392) and submitted it to me before he sent it. Later Mr. Russell sent me the reply received from Major Blair (Gov. Ex. 532).

Gov. Ex. 392, letter from Mr. Horace Russell to Major Gist Blair, dated February 9, 1938, and Gov. Ex. 532, letter from Mr. Gist Blair to Horace Russell, dated February 10, 1938, were offered in evidence. In addition to the general objection of incompetency, irrelevancy, and immateriality, to these exhibits, Gov. Ex. 532 was particularly objected to as it was only a personal engagement on the part of Major Blair to engage his services as a mediator, and there is nothing to connect the letter with his hospital, and nothing to show that he had any authority to act in this capacity or that he was acting therein in writing the letter on behalf of the hospital. These objections were overruled and exception was noted.

Gov. Ex. 392 was received in evidence and read to the jury as follows:

"DEAR MAJOR BLAIR:

I write to express my appreciation and that of my associates for your accommodation of us in arranging for and taking the time to discuss with Mr. Kirkpatrick and me the

hospitalization problems of the members of Group Health Association, Incorporated. We were glad to present to you and your associates at the hospital our problems as best we could and, particularly, we appreciate your kindness in suggesting that you would look further into the matter and discuss it with others and see what can be done about it.

It occurred to me that you might like to know that in our recent dealings with the Medical Society of the District of Columbia it has been represented by Messrs. Frederick A. Fenning, George P. Hoover and Wm. E. Leahy, and it may be that you will be willing to discuss the matter with these gentlemen. We assure you that we shall be glad to discuss this problem with you and others concerned at any reasonable time, and that we are anxious to make proper provision for our hospitalization which will permit our treatment in the hospitals by competent physicians and surgeons selected by ourselves. We should like very much to avoid any controversy about the matter if we can.

Meanwhile, we shall await word from you as to the course you advise.

Very truly yours,"

Gov. Ex. 532 was received in evidence and read to the jury as follows:

"DEAR MR. RUSSELL:

Replying to your letter of February 9th, I think I understand your method of approaching the hospitalization problems of the members of the Group Health Association, Inc., and for that reason I feel I can say that I try to approach problems in this same way. The problem you have suggested to me is a very big one and the adjustment of the conflicting interests requires tact and persistence and a great deal of trouble to instill into the minds of people whose interests are affected a comprehension of the wisdom necessary to give up a little on their part in consideration of a little being given up on the part of others.

I am not able to clear up your problem for you much as I would like to do so. I will, however, feel around and find just what can be done and if I find any favorable indications, I will arrange a meeting with you. I do not like letter writing because letter writing sometimes adds



to the many misunderstandings which angry discussion always causes and frequently brings about the worst possible results.

Sincerely yours,"

As a result of correspondence I had a conversation with Mr. Aspinwall, President of the Garfield Hospital, in February, 1938.

Q. Will you state to the jury the substance of that conversation?

Defendants objected on the grounds of incompetency, irrelevancy, immateriality, that no conspiracy had been shown, and the question called for hearsay.

These objections were overruled and exception noted.

A. Present there were Mr. Aspinwall, Mr. Ormond Loomis and myself. I told Mr. Aspinwall the purpose of our visit, which was to try to get the members of our staff admitted to the courtesy staff of Garfield Hospital. He knew that Dr. Selders had already had temporary privileges there; but I told him that we were interested not only in one physician, but we were interested in all of them. I asked what he thought he could do to bring about that result. "Well," he said, "I have been following the difficulties that you seem to be having for some time past here and," he said, "I am not altogether in sympathy with some of the opposition that you encounter." He said, "We in the hospital board of trustees are, for the most part, laymen, and we try to be guided in our decisions with respect to the admission of physicians by the conclusions of the medical staff who, in the end, are the ones we deem best fitted to advise us."

He offered also to speak among his friends in the other hospitals and among the physicians here in Washington and see if some solution of this question might not be had. He made this suggestion, that what he called a Committee of Arbitration be established to the end that both sides might submit whatever they chose to that committee, and ask the committee to arrive at a conclusion. That conclusion would be adhered to by agreement of both sides. Nothing ever came of the suggestion, so far as I know. I never heard anything more about it.

During the course of the conversation I told Mr. Aspinwall that word had come to me that the physicians of at

least one hospital in Washington, which perhaps was his, had threatened to walk out if any member of the staff of Group Health Association were admitted to that hospital.

"Well," he says, "I am afraid of that."

"Well," I said, "Mr. Aspinwall, when are the trustees of these hospitals, who certainly have a trust to perform, going to take this question in hand and make some decision about it?"

"Well," he says, "I don't know." He says, "We are pretty much in the hands of the physicians in our hospitals."

He volunteered to ask his counsel, Mr.—I have forgotten the name of the gentleman—to confer with counsel for Group Health Association, just as a matter of clearing up any question of legality that might be in Mr. Dunlop's mind. No questions of the legality of the Association was brought up at that meeting at all. It all hinged on the question of admission of the doctors of our staff as such to the courtesy staff of the hospital."

I heard nothing further from Dr. Aspinwall.

I know Mrs. Eugene Meyer. She is the wife of the owner and publisher of the Washington Post.

Q. Did you ask her to do anything for Group Health Association in the way of getting in any of the hospitals?

The question was objected to on the ground that it was immaterial and that the witness should be limited to identifying any letters written, if he could. The objection was overruled and exception was noted.

A. Yes.

Q. What hospital did you ask her to approach?

A. The Casualty Hospital.

Q. Did she agree to it?

A. She did.

Q. At your request did she write a letter to Mr. Allmond, the secretary of the board of trustees of Casualty Hospital?

Defendants objected on the ground that the question called for a hearsay answer. The objection was overruled and exception was noted.

A. She did.

She showed me the letter she sent them (Gov. Ex. 533). Gov. Ex. 534 is the letter Mrs. Meyer sent me. Gov. Ex. 536 is the letter she enclosed with Gov. Ex. 534.

Gov. Exs. 533, 534, and 536 were offered in evidence. The defendants objected on the grounds of incompetency, irrelevancy and immateriality; that no conspiracy had been proven, and hearsay. The Court overruled these objections, allowed the defendants an exception, and received in evidence Gov. Ex. 536; rejected Gov. Exs. 533 and 534; and permitted the following statement to be made concerning Gov. Ex. 533.

Mr. Lewin: Members of the jury, the Court rules that U. S. Exhibit 533 for identification, Mrs. Meyer's letter, is not admissible, but I am permitted to state that that letter did request from that hospital the admission of Group Health Association doctors for courtesy privileges.

Exhibit 536, however, is received in evidence and it is the reply of S. H. Rogers, president of the board of directors of the Eastern Dispensary and Casualty Hospital, to the letter of Mrs. Meyer, dated June 10, 1938, and on the letter-head of that hospital.

Gov. Ex. 536 was received in evidence and read to the jury as follows:

"DEAR MRS. MEYER:

I wish to acknowledge your letter of the 26th to Mr. Allmond, the Secretary of our Board, on the subject of hospitalization for Group Health Association patients, as I am chairman of the committee which has handled this problem for our board.

Our committee has given very earnest consideration to this problem as relates to our institution, but as stated to Mr. Kirkpatrick and Mr. Loomis at a recent interview, on account of long-established by-laws and rules of our institution we have not been able to work out a plan that permits our accepting patients to be attended by physicians who have not the approval of the local medical society.

We appreciate very much your interest in our institution in connection with this matter, and it is our hope that the Medical Society and the officers of the Group Health Association may soon find a solution to their differences, as we understand they are still working toward that end.

Very truly yours, S. H. Rogers, President, Board of Directors, Eastern Dispensary and Casualty Hospital"

The explanation referred to in the letter occurred at the conversation I testified I had with Mr. Rogers some time in June, 1938. At the time of that conversation Mr. Rogers, Miss Rogers, his sister, Dr. Rogers Young, and Mr. Baker, Mr. Loomis, and myself were present.

Q. Will you state to the jury what the conversation was at that meeting, what you said and what was said by these people representing the hospital?

A. In substance, it was this. We again offered our plea for admission of the members of our staff to Casualty Hospital, and Mr. Rogers led the conversation for the other group, and he said that it had been a tenet of their by-laws for some fifty years that no admission to the courtesy staff of that hospital could be made unless the applicant were a member of the District Medical Society; and he offered that as the one and only stumbling block in the way of admission of any of our staff members to that hospital. I offered at that meeting to enter into a contract with that hospital to take over one of its bays—sick bays—they call them bays or wings of the hospital—which I understood contained approximately 40 beds; that we would rent these beds under contract, provided the hospital would admit our physicians to treat patients who might occupy those beds. But again he offered the objection that the by-laws of the hospital would prevent such action. Finally, addressing Dr. Rogers Young, I think his name is, who I understood was the man in charge of the surgical staff of that hospital, or its medical staff, I said to him, "Doctor, when are you hospital people going to stand up on your hind feet and assert your rights in this question?" His reply was that he did not know. After a little more discussion about the subject in general the meeting ended.

Dr. J. Rogers Young was present during the interview and sat right across the table from me and was in a position where he could hear the entire conversation.

Cross-examination.

By Mr. Leahy:

The conversation I had at Casualty was early in June. In that conversation Mr. Rogers said that it had been a part of their by-laws for upwards of 50 years that appoint-

ment to the courtesy staff of their hospital was confined to members of the District Medical Society.

Q. What you wanted them to do was to change those by-laws to admit your doctors; is that right?

A. I wanted them to do anything they thought best to do.

Q. To do that you knew they would have to change the by-laws which had been in effect fifty years?

A. Perhaps.

Q. You knew that, didn't you?

A. No; I didn't know that at all. I had nothing to do with what they should do. All I was interested in was getting our staff in there. How they did it I wasn't concerned with.

Q. But you knew they could not get in there unless they changed the by-laws which had been in force for fifty years?

A. Yes; from the statement of Dr. Rogers.

On June 10 I received a reply from S. H. Rogers, and he reiterated the by-laws on the matter.

Q. In connection with that do you recall that Mr. Rogers said anything about the fact that Casualty Hospital was incorporated to take care of the poor?

A. No. I recall no such statement as that. He may have made it, but I don't recall it.

Q. See if I can refresh your recollection. Do you recall whether Mr. Rogers said to you that Casualty Hospital was incorporated to take care of the poor and the indigent, and you replied, "We are not interested in that"?

A. No; I don't recall any such thing.

Q. Would you say it was not said?

A. I will say that I don't think I said it.

Q. Was there anything said that Casualty Hospital was approaching its 50th anniversary of existence?

A. I don't recall that. The only reference to 50 years was Mr. Rogers' statement about the by-laws.

Q. Did you then tell Dr. Rogers that if he would let you take this bay of 40 beds you would get Mr. Acton, the publicity agent for G. H. A., to push Casualty and give them great publicity on their 50th anniversary?

A. Never made any such statement.

Q. Nothing like that in substance?

A. Nothing like that, approaching it, near it, or anything around that.



Q. Did Mr. Loomis make any such statement?

A. I don't know.

Q. You were there, weren't you?

A. I was there, but I don't recall his making any such statement.

Q. Would you say he did not make such a statement?

A. I will hazard a guess that he didn't make it.

Q. So your answer as to this conversation is that nothing was said about the incorporation of Casualty Hospital to extend that it was to take care of the sick and the indigent, which you were not interested?

A. Nothing that I recall at all about that.

Q. And that nothing was said about booming Casualty they would let G. H. A. patients take over that bay?

A. No. We had no interest in booming Casualty or anything else.

Howard Acton is chairman or director of public relations for the Home Owners' Loan Bank Board. I don't think he had anything to do with establishing Group Health. I knew in January that it was the statement of the superintendent of Garfield Hospital that the hospital could not admit Dr. Selders to staff privileges in Garfield until the ability of Group Health was determined. I wrote to Garfield on February 2nd. On January 28, 1938, I had signed a petition for a declaratory judgment in this Court. The signature on the petition is mine. In that respect we were represented by Mr. Horace Russell, Mr. Keeley, Mr. Long, Mr. Newton, all employees of Home Owners' Loan Corporation. I swore to the petition on January 27; my signature appears on oath.

Q. Did you swear on January 27 that on or about January 15, 1938, notice was given by the defendant, David A. [redacted], Acting United States District Attorney for the District of Columbia, to the plaintiff, that, unless operations were immediately suspended and the affairs of the plaintiff wound up, a bill for injunction or legal proceedings leading to the involuntary dissolution of the plaintiff corporation would be brought against the plaintiff on the ground that it, said plaintiff, is illegally engaged in the practice of medicine, as the same is defined by the Healing Arts Practice Act in the District of Columbia, and is illegally engaged in the insurance business within the meaning of

Title V, Chapter 7, Section 179 of the Code of Laws of the District of Columbia?

The Government objected on the ground of immateriality and that the question is outside the scope of direct examination. The defendants offered to prove that this witness had sworn to the facts stated at a time when he was pressing the hospital for admission of Group Health doctors to its staff; that the question of legality of Group Health had been brought out on direct examination and the witness had written letters on that very question. The Government's objection was sustained and exception noted.

I identify Gov. Ex. 432 as a letter written by me and Gov. Ex. 433 as a reply to my letter. At the conversation which followed with Mr. Aspinwall we didn't discuss the question of the legality of Group Health.

I wrote Mr. Aspinwall (Gov. Ex. 432) that I felt there may have arisen some misunderstanding concerning the legality of our operation, and in order that the question might be discussed and a clear understanding had by both parties I request that representatives of Group Health be accorded the privilege of appearing before the board of trustees for the purpose of discussing the situation. On February 3 I received a reply from Mr. Aspinwall that he would be glad to discuss the matter. When I talked with Mr. Aspinwall we didn't discuss that. Legality was one of the things we wanted to discuss and I didn't state in my letter that there was anything else I wanted to discuss. I knew that three or four days before there had been filed in this Court the petition which I signed and to which I swore. I admit that the suit was filed to raise the question of the legality of Group Health.

On February 2, 1938, I wrote Episcopal Hospital. I didn't ask for privileges for all of our doctors. I asked for privileges for Dr. Dabney. Dr. Dabney was on the staff. I asked for privileges because he couldn't take our patients in as a member of our Association. As I said the other day he took them in through the back door. Dr. Dabney took approximately 50 Group Health patients to Episcopal Hospital. We paid for these patients with Group Health checks. Dr. Dabney was never removed from the staff of Episcopal Hospital. He told me he had been on the staff for a good many years. While he was with Group Health he remained on the staff. Dr. Dabney told

me that they dared not touch him at Episcopal and they had to let him bring patients there, even by the back door. We did get our Group Health patients in Episcopal Hospital under this surreptitious arrangement. Dr. Dabney wasn't admitted there as a surgeon or physician recognized by the hospital as being on our staff. He was there as a private physician, and he brought our members in there as his private patients. We wanted him recognized as a member of our staff. We didn't like this business of him having to take patients in there quietly, any more than he did. I never talked to anybody at Episcopal Hospital about this. All the information I have, I obtained from Dr. Dabney. We never had a bit of difficulty at Group Health in having cases treated at Episcopal; in other words, any Group Health patient who was under Dr. Dabney's care while he was with Group Health was treated at Episcopal Hospital without any difficulty.

I think in writing to Columbia Hospital I asked for privileges for all the members of our staff and the identical request was made to all the hospitals. I never discussed the matter with anybody at Columbia. In 1938 we had no obstetrician, and Dr. Selders felt himself qualified to administer to or treat obstetrical cases to a limited degree. I don't think he ever got privileges at Columbia; I am not sure of that.

Q. Did you state on Monday that he never got any privilege in Columbia?

A. Did I what?

Q. Did you state on Monday that Dr. Selders was not permitted to go to Columbia?

A. I perhaps did.

Q. Why did you make that statement?

A. Well, that was my recollection.

Q. On what was your recollection based on Monday?

A. On my memory.

Q. Has your memory changed now, since Monday?

A. No, sir.

Q. Will you tell the jury whether he did or did not get the privilege?

A. My answer is exactly the same as it was on Monday.

Q. What is that?

A. That I don't recall whether he ever treated anyone there or not, but I do know that he wanted to get this limited obstetrical arrangement, as he described it.

Q. See if I can refresh your recollection, Mr. Kirkpatrick.

At the time you were writing these letters to the hospitals, and more particularly this one to Columbia, didn't you know that Dr. Selders was asking for the widest privileges for a surgeon to ask?

A. Mr. Leahy, —

Q. Yes or no.

A. No, I don't know anything about that, what he was asking for.

I didn't inquire of Columbia Hospital about any doctor other than Dr. Selders and so far as I knew, no other doctor had made application to Columbia Hospital. I didn't know for what privileges Dr. Selders had applied; I had nothing to do with that. All I wanted was for him to be admitted to the hospital for whatever thing he thought he could do. I had nothing to say with what he thought he could practice there. That is his business. I am a layman. On February 5 I learned that the medical board had made no recommendation on Dr. Selders' application to the board of directors. I don't remember any correspondence with Columbia following my letter of February 5, 1938. I don't remember any letter of March 3, 1938, in which Columbia Hospital advised Group Health that Dr. Selders had been given privileges. I know as a fact Dr. Selders had privileges in Columbia Hospital as a representative of Group Health and as one of our staff members from March, 1938, for obstetrical work. He may have had such a status there.

Q. Did you know about the action of the Board of Columbia Hospital that Dr. Selders had been admitted?

A. No, I was never so notified.

Q. Did you know that Dr. Selders wasn't found qualified for major surgery for which he asked?

A. No.

I knew that Mr. Penniman had written Garfield Hospital requesting that Dr. Selders be admitted on the staff. I know that he had been granted temporary privileges. I knew that on the 25th or 28th of January, that temporary privileges had been withdrawn.

Q. Now, did you personally as President of Group Health do anything between your letter of February 2 to Garfield Hospital and your letter of July 28th, 1938?



A. I don't think so, unless this meeting with Mr. Aspinwall came before the July 28 letter. I am not sure about that.

Q. You aren't sure on that?

A. No. But I will say this, that if it came before the letter of July 28th, then I did that, had that meeting.

I think Dr. Halstead, of our staff, made an application to Garfield Hospital in August, 1938.

Q. Do you know whether there were any of the members of your staff who had courtesy privileges at Garfield Hospital besides Dr. Selders on temporary?

A. Perhaps Dr. Cahoon, either in the very early part of 1939, or the last of 1938.

Q. You mean the early part of 1937?

A. No, I mean 1939.

Mr. Kelleher. I object to that, and move that be stricken. It is outside the scope of the indictment.

The Court: Yes. Confine yourself to that.

I knew that Dr. Scandiffio and Dr. Lee of our staff had courtesy privileges at Garfield Hospital in 1937 and 1938. Two other applications at Garfield besides Dr. Scandiffio and Dr. Lee, were acted favorably upon about a year or so after we opened our clinic. I handled some of the correspondence at Group Health and our administrator, Mr. Perry Taylor, handled some, and the medical director handled some. Perry Taylor came to Group Health in July, 1938. Mr. Penniman and I handled the correspondence concerning applications for courtesy privileges at the hospitals. I question whether Dr. Brown handled any correspondence with reference to the applications for courtesy privileges.

Q. Well, then, you didn't wish to leave with the jury on Monday last the impression that none of the doctors of your staff had courtesy privileges at Garfield during this period, did you?

A. Yes. I think that is a fair impression to leave with this jury. I don't see anything in this picture that would lead otherwise.

Q. Well, you don't know much as to whether there were two or four members of your staff?

A. I think I have a pretty good knowledge of the general picture, Mr. Leahy. If you are going to get down into details I may be a little hazy on details.



Q. All right. Answer the simple question.

A. Yes.

Q. In 1937 and 1938 how many members of your staff had courtesy privileges at Garfield?

A. From my conversation with them I should say that Dr. Scandiffio and Dr. Lee had courtesy privileges in 1937, but from my conversation also with them I should say that they didn't have them in 1938.

Q. Now will you answer whether or not any applications were filed other than those of Doctors Scandiffio and Lee, which were acted favorably upon, for courtesy privileges at Garfield?

A. In what period?

Q. In that same period.

A. In what period is that?

Q. In 1937 and 1938.

A. Other than Dr. Selders I don't know of any.

Q. You don't know of any?

A. No.

I wrote a letter to Sibley Hospital on February 2, 1938. I remember seeing some correspondence from Sibley Hospital to the effect that all of Dr. Selders' references had not been heard from. I didn't investigate any of the persons vouching for Dr. Selders, as president of Group Health. I had nothing to do with that. I first met Dr. Selders in June, 1937. I didn't know that he had just completed his residency at Worcester, Massachusetts, Hospital. I was on the board of trustees of Group Health which hired Dr. Selders. I don't know now whether he graduated a week or ten years before we hired him. Dr. Selders was our only surgeon for five or six thousand people. I don't now know what his qualifications were, and have no apology in that respect. The reply from Sibley Hospital did not come to me but went to Dr. Selders, and went into the clinic's file.

Q. Then you know what I am talking about?

A. Yes. You asked me if I received a reply and my answer was no.

Q. Let us see how good your recollection is. It came to you personally, didn't it? Take a look at the letter (indicating).

A. Yes, sir. That came to me personally.

Q. Wrong again.

A. Perhaps I may be wrong many times.

When I received the letter from Sibley I took no steps to supply the hospital with further information except to ask Dr. Selders if he had gotten in touch with his references to see if they could make reply to whatever letters were necessary. That is all I did as president of Group Health.

By Mr. Leahy:

Q. Do you know whether Dr. Selders ever supplied that information, Mr. Kirkpatrick?

A. I remember seeing a letter here acknowledging the receipt of three or four—out of four, I understand.

By Mr. Lewin:

Q. Isn't that in this very letter (indicating)?

A. Yes, sir. He says he received three of them, in that letter. That is the letter I referred to.

On February 24 I saw a letter from Dr. Taylor to Dr. Selders advising him that the committee did not reverse its former action and that his request had been refused. I asked that Dr. Selders be admitted to the courtesy staff to do anything that he or they agreed he could do. We didn't undertake to say what these doctors should practice. It is up to them to arrive at that conclusion. When I learned Dr. Selders had been rejected I didn't make any inquiry at Sibley Hospital to determine why. I never was in Providence Hospital in my life. I have never met Sister Rosa. I have never met Sister Rodríguez at Georgetown. I never went to Georgetown personally. My recollection is that Dr. Selders' application in either or both of these hospitals had been disapproved or no decision made. I never followed up the correspondence personally after that. I never met anyone at Homeopathic Hospital. I received from Homeopathic Hospital advice that Dr. Selders' application had been disapproved. I didn't follow that up personally. I didn't find out the reason why Dr. Selders' application at these three hospitals had been rejected. I don't know what Dr. Selders had been making application for in any of the three hospitals. When I corresponded with Emergency I received a prompt response which quoted a paragraph from the by-laws of the hospital requiring of applicants for membership on the staff, membership in the Medical Society, which by-law, I think, was adopted in 1936.

When I had my conversation with Mr. Blair I was accompanied by Mr. Horace Russell, who is general counsel of the Federal Home Loan Bank Board, and a member of the board of trustees of Group Health. The regulation of 1936 requiring membership in the Medical Society was not discussed, as I recall, nor was the question of the illegality of Group Health. Following the conversation I had with Mr. Blair I had no further conversation at all with anybody in Emergency Hospital. I brought to the attention of the hospitals the decision of Justice Bailey in this Court on July 28, 1938, by sending a letter to each hospital. Following the sending of those letters I received a response from some of the hospitals acknowledging the letter. I didn't do anything personally to follow up those letters.

Dr. Selders remained with us until January, 1939, when I asked for his resignation. I was on the board of trustees of Group Health at that time. I first came to the board in April, 1937. Dr. Brown was first employed in June, 1937. Group Health acting through its board of trustees, employed Dr. Brown, and Dr. Brown made recommendations to the board in the employment of other physicians and the board did the actual technical employing.

Sometime in June, 1938, I had a series of correspondence with Sibley Hospital. We had two or three members in attendance at Sibley Hospital, and those patients were discharged. In the regular course of things we tendered our check in payment for the services there and in all three cases the checks were declined, and the correspondence grew out of the declination of those checks.

I recall receiving a letter from Dr. Hare of the Washington Sanitarium and Hospital dated February 8 (Gov. Ex. 452) acknowledging my letter of February 4, advising that the application of Dr. Selders would be considered. I don't remember what courtesy privileges we were applying for for Dr. Selders, as Dr. Selders filled out the application blank. Later Dr. Hare wrote (Gov. Ex. 453) and stated that in view of the fact that there were some problems involved, "it was voted that the application of Dr. Selders be tabled." The only other thing I did concerning Washington Sanitarium and Hospital was to write them on July 28, 1938, concerning Judge Bailey's decision.

In February, I wrote to George Washington University Hospital concerning Dr. Selders' privileges and received a reply that they couldn't grant the privileges applied for

by Dr. Selders. I didn't follow up that letter to find out why they couldn't do so, nor did anybody for me.

Gov. Ex. 458 has reference to Dr. Price. I believe Dr. Price retired from Group Health after I retired from the board in November, 1939. I had some discussion with Dr. Price toward the end of 1938.

On January 20, 1938, Sibley Hospital wrote that they could not grant Dr. Selders' application because he had not supplied references. On February 24, 1938, (Gov. Ex. 412) they wrote to Dr. Selders stating that the committee didn't reverse its decision. I knew that Sibley Hospital had a rule in common with other Washington hospitals requiring any doctor practicing in Sibley Hospital to be a member of the staff. In the month of February I knew that Dr. Selders didn't have privileges at Sibley Hospital. Sometime before February 5, I sent a check to Dr. Taylor, Superintendent of Sibley Hospital. I received a letter from Dr. Taylor (Gov. Ex. 417) stating that Miss Tommie Lee Nix, on December 24, 1937, was admitted "to this hospital on service of Dr. Rush Conklin; later she was transferred to the service of Dr. Little, and was then operated on by Dr. Cobb. On her admission card responsibility for the payment of her bill is assumed by James R. Nix and we look to him for the settlement of this account." I had not had any correspondence before from Dr. Taylor in the case of anyone who had gone to the hospital. I sent the Nix check back to Dr. Taylor two or three times, and I did it because I wanted to establish the fact that we could pay the bill with our own check. I did this because we felt we had a right to discharge this liability, which we regarded as ours; and because we wanted to establish the fact that we had the full right to have the hospital accept our check, just as the other hospitals had. Every other hospital to which we had sent checks accepted them and Sibley was the only hospital with which we had any differences. We wanted Sibley's endorsement on our check. We were simply trying to establish the validity of us tendering a check and have them accept it. I was trying to make Dr. Taylor accept our check. He told me someone else was responsible, and he said the fact of such responsibility was evidenced by the notation on the admission card of the patient. On February 18 I sent (Gov. Ex. 418) and said in my letter in response to Dr. Taylor's statement that he considered the check was evidently sent in error, that I wanted him to know



that there was no mistake on my part in transmitting the check in question. I said in my letter, "Under the provisions of the by-laws of Group Health, Inc., Miss Nix is entitled to have provided to her hospitalization, when such is necessary. Miss Nix having received hospitalization in your institution for the dates mentioned is therefore entitled to have the cost of that hospitalization paid for by Group Health, Inc. Your attention is invited to the fact that the stub which contains the notation referred to is not in any sense a part of the body of the check. The stub is provided only for the information of the payee as to what the check is entitled to cover. In depositing the check, if you so desire, the stub, of course, may be detached before the check is deposited. We are therefore returning the check to you and ask that it be deposited in the usual course." I think Dr. Taylor sent the check back again on February 21. He called my attention to the fact that she had signed her own card and that the card has the name of her brother James R. Nix, as the person responsible for the bill. We didn't consider Mr. James R. Nix responsible for the bill; we considered ourselves responsible for it. We were going to get Sibley to accept the check if we could. We finally settled it. We got no record from Sibley Hospital that we had paid the bill. We gave the money to someone at Sibley. We asked for a receipt, but didn't receive one.

I asked Dr. Mitchell of Emergency Hospital if it was a fact that every member of the staff was a member of the Medical Society and he replied each time in the affirmative, but I knew this was error, as I know of the case of Dr. McCready, who was on the staff, but was not a member of the Medical Society, because he showed me a letter appointing him to the staff a week before. That was in the early spring of 1938, when he was serving as a refractionist for Group Health. He was employed by Group Health to refract eyes at five dollars a case. He was not a member of our staff, but was on a fee basis. I didn't tell Dr. Mitchell that we had a member of our Association on the hospital staff at Emergency because we didn't consider him a member of our staff as he was employed on a fee basis. I didn't tell Dr. Mitchell Dr. McCready was on our staff on a fee basis. I don't know of my own knowledge that Dr. McCready wasn't a member of the Medical Society. He told me he wasn't. I never inquired of the District Medical



Society, and took Dr. McCready's word for it. Other physicians doing work for Group Health on a fee basis were Dr. Eckleby, the defendant Dr. Warfield, and Dr. Ledbetter, who did work for us and we paid them. I should say there were six or eight or possibly a dozen doctors who did work for us on a fee basis. I don't know who on the staff could do the work Dr. Ledbetter does. I didn't get into this medical question at all. We have nobody on the staff to do orthopedic work and I don't know what work Dr. Ledbetter did. We didn't have a written agreement with Dr. McCready or with any of the doctors on our fee basis staff, and we have never had any written agreements with any doctors on our staff.

#### Redirect examination.

I don't find Dr. McCready's name on Gov. Ex. 32 (Roster of Medical Society of District of Columbia).

I had a meeting with Mr. Rogers of Casualty Hospital at which Mr. Rogers said that it was part of their by-laws that they could not accept on their courtesy staff non-members of the District of Columbia Medical Society. Gov. Ex. 403 is a letter which Dr. Rogers sent to me in which he said that if Dr. Selders will submit a further application it will receive consideration.

Q. Is there anything in that last communication indicating that there was some iron-clad rule which would prevent the doctor from receiving staff privileges notwithstanding he was not a member of the Society?

Mr. Leahy: I submit it speaks for itself.

The Witness: There certainly isn't.

The Court: I can see the necessity for counsel on both sides having to refer to letters. It is impossible for the jury to understand otherwise what they are talking about.

MARY FRANCES STUART ~~MARY~~, a witness for the United States.

#### Direct examination.

By Mr. Lewin:

In 1937 I was Miss Stuart, and was laboratory technician of Group Health. I graduated with an A. B. degree.

major in science, and then I took a year's course at the University of Virginia Medical School as a laboratory technician.

I was taken ill on November 17, 1937. I awaked at six-thirty in the morning with a severe abdominal pain, got out of bed and fainted. Dr. Allan Lee, on the staff of Group Health, visited me very soon after I called him. He made an examination and recommended I be taken to Garfield Hospital. I was taken to the hospital in an ambulance. I arrived at the hospital around ten o'clock.

Q. Did he tell you that an operation would be necessary?

The defendants objected on the ground this is hearsay. The objection was overruled and exception noted.

A. He thought before I left home, he told me before I left home an operation would be necessary.

I left it to him to engage a surgeon and I didn't know who the surgeon would be. On arriving at Garfield I was put to bed. I don't know how long I was in the hospital, it seemed to me long, and then Dr. Herbert H. Schoenfeld came. As I recall no treatment was given me while awaiting the doctor's arrival.

Q. When the doctor finally came, who was he?

A. Dr. Schoenfeld.

Q. Is that Dr. Herbert H. Schoenfeld?

A. Yes.

Q. And did he then give you any treatment?

A. I had an injection before I was taken to the operating room.

Q. Yes, but did he give you any treatment after examining you?

A. No.

Q. Did he give you that treatment after he came back?

A. I don't recall.

When he returned, in about an hour, he had an assistant with him. I was later operated on by Dr. Schoenfeld in the early afternoon.

DR. ALLEN E. LEE, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am a Doctor of Medicine. I limit my practice to diagnosis and internal medicine. I am a general internist. I obtained my doctor's degree at the University of Michigan in 1930; I had some postgraduate work at Ohio State in 1932; in 1931 I was in Cleveland, in 1932 at Columbus. I was chief resident at the Ohio State University. After leaving Ohio State I went to Ann Arbor and then came to Washington to practice medicine in 1934. At Ann Arbor I did some studies in internal medicine at the University of Michigan; then I came to Georgetown where I was instructor in internal medicine in the Medical Department. While at Georgetown I had a course in Materia Medica with the nurses and later I taught some classes of nurses at Garfield. I joined the Medical Association in 1935.

In the latter part of 1937 I joined the staff of Group Health. I was affiliated with the clinic when it opened. Mary Frances Stuart was a patient of mine at the clinic shortly after I went there. My record shows that I saw Miss Stuart on November 18, 1937, at 7:30 a. m. After examining her carefully I made a diagnosis of one of two possibilities which I indicated as an acute appendix, possibly rupture, or possibly a ruptured ovarian cyst, with hemorrhage. That was my working diagnosis at that time. She was in shock, surgical shock, and had a surgically acute abdomen. Surgical shock is a condition in which a patient's bodily functions have more or less collapsed; the circulation, and possibly involving blood pressure and heart function, cerebral function. We consider that a serious condition and the shock is usually considered a critical thing. Ruptured internal viscus produces shock. It doesn't necessarily produce death within a short length of time. It is not as bad as a traumatic shock or a shock following an accident. I ordered Miss Stuart to be brought to Garfield Hospital after I spoke to Dr. Brown. Miss Stuart was in a more or less semi-stuporous condition at that time, and my opinion was that surgery was indicated as soon as possible. I am not a surgeon. Miss Stuart voiced a request for a surgeon at that time and that surgeon was called, Dr. Schoenfeld. I called Dr.

Schoenfeld, described the case, gave him my diagnosis and stated I thought the patient was in a serious condition and would appreciate his seeing her as soon as possible. Dr. Schoenfeld was to meet me as early as possible at the hospital. When I arrived at the Hospital I met Dr. Schoenfeld. He operated upon Miss Stuart in my presence. The operation showed cystic tumors of both ovaries and tubes, with hemorrhage. The right ovary was ruptured, accompanied by hemorrhage. That condition is serious, because it is a ruptured viscus, but is not such that it will cause death immediately. From the amount of hemorrhage when the patient was on the operating table, I would say it wasn't serious, but clinically a ruptured viscus is usually considered a serious diagnosis.

Prior to joining Group Health I notified the Medical Society that I intended to resign. Gov. Ex. 41 is my resignation. I received a letter from the Society saying I was to be taken before the Compensation, Contract and Industrial Medical Committee, or that my standing was to be taken before them, that committee, in consideration of the contract which I was to have had with Group Health. Gov. Ex. 39 I received from Dr. Hooe. After receiving this letter I had several conversations with Dr. Hooe and told him that as I had sent in my resignation I was not subject to any call by his committee. I don't recall what he said. Later I received a notice to appear before the Executive Committee.

Q. Did you have any hearing before the C. C. & I. M. Committee?

A. Well, I recall having no hearing until the very last night, at which time I enclosed my resignation from Group Health.

That was after the hearing of the Executive Committee started. That was the only meeting I recall being in. It was the Executive Committee, I believe, in joint session with the Contract Committee. I had no hearing before the C. C. and I. M. Committee prior to December 6, 1937. At that meeting of December 6, 1937, I appeared to explain the contract at issue between me and Group Health. The entire group asked questions. I believe I was questioned by attorneys. On December 10 I had a telephone conversation with Dr. Hooe, during which he stated that the proceedings would be dropped or that my standing would be



unaffected in the Society should he have a copy of my resignation by a certain time that evening, that was my resignation from Group Health. On that occasion I believe I called Dr. Hooe. I enclosed my resignation from Group Health and attended a meeting at the Medical Society building as a member in good standing of the Society. After sending in my resignation I met Dr. Hooe, who requested that I stop in before the Contract Committee and he would announce that all proceedings would be dropped. I went before them and Dr. Hooe announced that the proceedings were dropped and that my standing was unaltered, in accordance with the fact that he had notice of my resignation from Group Health. Gov. Ex. 60 is my resignation to Dr. Brown, a copy of which I sent Dr. Hooe. I received Gov. Ex. 61.

#### Cross-examination.

By Mr. Leahy:

I saw Miss Stuart at 7:30 a. m. Dr. Brown suggested the name of Dr. Schoenfeld. I don't know what time Miss Stuart arrived at Garfield, but I didn't get there until sometime before twelve o'clock. I don't remember the exact time but I recall coming into the hospital, meeting Dr. Schoenfeld, and my impression was at the time that he had seen the patient, and from then on we had our contact. Some time has to elapse in the preparation for an operation. The operating room has to be gotten in order and the patient prepared for the operation. I have a note that she was operated on at 11:30 a. m. The operation disclosed that my diagnosis was substantially correct. There was a hemorrhage in the pelvic cavity. This hemorrhage was of such volume as would have endangered her life.

I submitted my resignation to the Medical Society on October 30, 1937. I arrived at the conclusion to resign, feeling perhaps I ought to avoid a lot of time in controversy. "That conclusion was made unadvised." That conclusion was "my own good judgment." I recall that I made an attempt to recall my resignation, since there was no action on it, and, in that connection, I wrote Gov. Ex. 43. That letter was written after I had a conference with Mr. Penniman and Mr. Zimmerman, and there might have been some legal counsel with us at the time, as there were lawyers there. The letter to a great extent was my own suggestion. At the



hearing on December 6 there was an imposing array of lawyers for Group Health, some four or five. Mr. Russell, Mr. York, and some others; practically the same persons attended the December 10 hearing. The Executive Committee was sitting there, it seemed to me at the time, as a combination of judge, lawyer, district attorney—a pretty complete group of itself. They all seemed to ask questions. The lawyers for Group Health also asked questions, but we did not have much opportunity to explain. The lawyers for the Committee also asked questions.

My resignation from Group Health was my own deliberate judgment, without advice from any lawyers. I didn't want to waste time in a controversy that I could devote to my own practice of medicine, taking care of the sick. I arrived at the conclusion that perhaps the private practice of medicine in which I was then devoting most of my time was for me more preferable than Group Health. I arrived at the conclusion to resign from Group Health because I felt that I was wasting a good deal of time that should be devoted to the care of sick people rather than to be involved in a controversy between Group Health and the Medical Society. I could have devoted my entire time to Group Health, but it seemed to me that private practice was much more preferable.

#### Redirect examination:

I think that the controversy between Group Health and the Medical Society was the cause of my resignation from Group Health.

#### Recross examination:

The desire to devote my life to private practice was a factor in my decision to resign from Group Health. I had a preference for private practice as opposed to Group Health should there exist any controversy about the group practice type of medicine.

#### Redirect examination:

The question that if there had been no controversy would I have resigned from Group Health is hypothetical. If there had not been any controversy I might have still felt that some medical opinion ought to give the group type of practice support.

SARAH ABBOTT, a witness for the United States.

Direct examination.

By Mr. Kelleher:

In 1937 and 1938 I was employed in the Home Owners' Loan Corporation. I was one of the original members of Group Health. On January 26, 1938, I was injured in an automobile accident. I found I could not stand on my leg and an ambulance was sent from Emergency Hospital for me. The interne thought the leg was broken. When I reached the hospital I was taken into the emergency room and when I told them I was a member of Group Health the interne said—

The defendants objected on the ground the statement was incompetent, irrelevant and immaterial, and hearsay, and that it was not shown that the interne had any authority to speak for the hospital. The objection was overruled and exception noted.

The Witness: So, then, I called a Group Health physician, but I didn't have the night telephone number and it wasn't in the telephone directory at that time, because they were recently given it. So I suggested several people to telephone to, and they could not get any of them; they were not in at that time. So one of the friends who came with me agreed privately that she would telephone a Group Health doctor in the morning. She didn't have the night telephone number. So an interne came around and I said, "Well,—

The objection was renewed. It was overruled and exception noted.

A. The interne told me that I couldn't stay there as a member of Group Health; that I could send for a physician outside if I wanted to; and I suggested one of the doctors who is a member of the Emergency staff, but they said he was not a surgeon, so he wouldn't do. Then this interne told me that I couldn't stay there at all as a member of Group Health and I couldn't stay there that night unless I permitted the hospital to choose the physician. Then I asked him whom he was going to select, and he said, Dr. Marbury. I didn't know him, but I agreed to anything at that time, it was taking so long telephoning.

The various telephone calls and my conversation with the interne took nearly an hour. I was laid on one of the emergency beds. I didn't receive any treatment at all in the emergency room and when I agreed to take a room I was taken up to the room and the nurse took care of me the best she could that night. She used hot water bottles, if I remember rightly. There was no medical attention that night. No doctor came that night. Dr. Marbury didn't come. I wanted some one of the Group Health doctors that night, but as they could not get in touch with them I, of course, had to give that up and there was nothing for me to do except to agree to stay. The next morning Dr. Marbury came in and ordered an X-ray and shortly after that he left and Dr. Selders came in and I told Dr. Selders what had happened and that I had no objection to staying at Emergency if he could arrange it, and it was agreed that if he could not arrange it he would send in some ambulance and have me taken to another hospital. I think it must have been less than half of an hour when the ambulance men came in for me and they put me on a stretcher and gathered up all my things and then I was taken and turned over to Garfield. At Garfield they admitted me at once and Dr. Selders came in and ordered an X-ray. That was taken and I was taken to a ward at first and then was taken to a semi-private room. Dr. Selders came in to see me every day and he was just splendid and gave me the best of care and left his directions daily with the nurse, so I had nothing to complain about as to hospital treatment. It was very good.

#### Cross-examination.

By Mr. Leahy:

The accident happened a little after ten on the night of January 26, 1938. I think I arrived at the hospital at halfpast eleven—no, perhaps halfpast ten. For an hour I tried to get the doctors at Group Health, and my friends say it was along toward midnight before they got away. From ten-thirty until midnight I couldn't reach any of the doctors of Group Health. I didn't call for any doctor that night at Emergency. I suggested a doctor who was on their staff, whom the interne said was not a surgeon, so he could not consider it. The interne made a suggestion and told me that I could not stay there unless the hospital was per-

mitted to select the doctor. The interne made me agree to that and I agreed to take a room. I did not try to get any doctor that night at anybody's suggestion after I found I could not get a Group Health doctor. The hospital assigned me to a room and asked whom they were going to get, what doctor, and then the interne said Dr. Marbury whom I didn't know. I have been in Washington 29 years but I had never heard of Dr. Marbury. Dr. Marbury came in the next morning, somewhere about eight o'clock, and a half hour after he left Dr. Selders came in. A friend of mine had phoned Dr. Selders the next morning. By ten-thirty the next morning, I suppose, I arrived at Garfield Hospital. Dr. Marbury examined my leg, asked how it happened, and he recommended that an X ray be taken after his examination, and said nothing else. I don't remember the name of the interne. When I arrived at Garfield Hospital an X-ray was taken. I was assigned to a semi-private room and I remained there three weeks.

Gov. Ex. 475, letter from Gist Blair, President of Emergency Hospital to the president and board of directors of Garfield Hospital, dated January 27, 1938, was read to the jury, as follows:

"GENTLEMEN:

Miss Sarah Abbott was brought to this institution by the hospital ambulance on the evening of January 26th. She was given first aid in the emergency room and assigned to a bed in the hospital under the care of the staff surgeon on that service, with a diagnosis of possible fracture and possibly other injuries.

On January 27th, about noon, Dr. Raymond E. Selders, of Group Health Association, Inc., called and requested permission from the hospital authorities to take over the medical care of Miss Abbott, due to the fact that she was a member of Group Health Association, Inc.

Dr. Selders was advised that we were informed that he was not a member of the District Medical Society and he was not on our courtesy list, and therefore we could not extend him the privileges requested. It is a prerequisite with this hospital for practicing physicians, to become a member of our courtesy list, to belong to the Medical Society of the District of Columbia.

Dr. Selders contacted Dr. Henry Rolf Brown, at this office, in charge of Group Health Association, Inc., whereupon

Dr. Brown called the Superintendent of this hospital and demanded a direct answer as to whether Dr. Selders would be permitted to take entire direct medical charge of the patient. He was advised that due to the fact that Dr. Selders was not on our courtesy list, we could not extend him that privilege, but Dr. Selders was advised that he would be privileged to visit and observe the patient and consult with the staff doctor in charge. Dr. Brown then advised that he was sending an ambulance for the patient to be removed from this institution, and a short time later an ambulance from Garfield Memorial Hospital arrived, and we understand the patient was taken to Garfield Memorial Hospital.

We shall be under obligation to you for a full explanation of the circumstances under which this patient has been permitted to enter Garfield since it is not unlikely that we may be criticized for having declined to care for the patient as described when Garfield apparently is willing to take the patient as described.

Thanking you for as full an explanation of this case as you can possibly give us,

Very truly yours, Gist Blair, President. "P. S. Copy to Medical Society, District of Columbia."

Gov. Ex. 476, reply of the president of Garfield Hospital to letter of Major Blair, dated January 29, 1938, was received in evidence, and read to the jury, as follows:

"DEAR MAJOR BLAIR:

Your letter of the 27th in regard to Dr. Selders' patient has been sent to me.

This patient was brought in to the Garfield Hospital by private ambulance on the 27th at 3 p. m., with a fractured leg, and was admitted to Ward H.

In regard to Dr. Selders himself, he had been given the temporary courtesy privileges in accordance with our general practice, pending report on his credentials and standing, by the Staff. Upon the recommendation of the Staff these temporary courtesy privileges were withdrawn from Dr. Selders by the Board of Directors at its meeting on Tuesday the 25th instant. However, the notification of this action had not been received by Dr. Selders on the 27th when the patient in question was brought to the hospital.

I observe that you have sent a copy of your letter under acknowledgment to the Medical Society of the District of



Columbia, and I am, therefore, sending a copy of this reply to them also.

Yours very truly,"

Gov. Ex. 76, letter from President Blair of Emergency Hospital to the Medical Society of the District of Columbia, dated January 27, 1938, was received in evidence and read to the jury as follows:

"MY DEAR DR. CONKLIN:

I feel sure that the Medical Society of the District of Columbia wish this hospital to be able to carry on its work without unnecessary criticism, and we never have any favorites in the medical profession, although we have a staff of physicians accepted as the leading physicians in the city of Washington, who generously extend the privileges of the hospital to all those whom they believe capable and proper. This list is called our courtesy list.

Inasmuch as we cooperate with the Medical Society wherever we believe the best interests of the public are served by it and we sustain our staff in its selection of this courtesy list, provided it includes the leading practitioners of the District of Columbia, therefore the enclosed letter is one which I wish you would bring before your Board and executive authorities. I would suggest that the enclosed letter be read carefully and a reply, which will enable us to not only care for this case but similar cases which may arise in the future, be given us.

Thanking you,

Very truly yours, Emergency Hospital, Gist Blair,  
President."

Gov. Ex. 75, Dr. Conklin's reply to Major Gist Blair, dated January 29, 1938, was received in evidence, and read to the jury, as follows:

"DEAR DOCTOR BLAIR:

Your communication of January 27, 1938, has been received. The important subject matter will be given prompt consideration.

Very truly yours, C. B. Conklin, M. D., Secretary.  
cc—Dr. J. Ogle Warfield, Jr., Chairman, Hospital Committee."

Gov. Ex. 77, Dr. Conklin's letter to Dr. J. Ogle Warfield, Chairman of the Hospital Committee, dated January 29, 1938, was received in evidence, and read to the jury, as follows:

"DEAR DOCTOR WARFIELD:

I am enclosing herewith correspondence which is self-explanatory, for such action as your committee may deem proper.

Very truly yours, C. B. Conklin, M. D., Secretary.  
cc—Dr. Thomas E. Neill, President."

Gov. Ex. 528, letter from Dr. Conklin, Secretary of the District Medical Society, to Washington Sanitarium, dated July 29, 1937, was received in evidence, and read to the jury, as follows:

"DEAR DOCTOR:

It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article IV, Section 5 of the Constitution, quoted in full.

You are particularly urged to submit to the Compensation, Contract and Industrial Medicine Committee, pursuant to the Constitution, any or all contracts, written or verbal, under which you may contemplate giving your services.

Very truly yours,"

Gov. Ex. 529 was received in evidence and described to the jury as a letter from Dr. Conklin, Secretary of the Medical Society of the District of Columbia, dated July 29, 1937, enclosing the approved list, but not read.

Gov. Ex. 451, Mr. Kirkpatrick's letter to Mr. Rice, Credit Manager, Washington Sanitarium & Hospital, dated February 4, 1938, was received in evidence, and read to the jury, as follows:

"DEAR MR. RICE:

There is enclosed herewith an application executed by Dr. Raymond E. Selders, a surgeon on the staff of Group Health Association, Inc., for appointment to the staff of Washington Sanitarium and Hospital.

It will be very much appreciated if this application may be presented to the proper body and advise us of such action as may be taken. Your prompt attention to this matter will be appreciated."

Gov. Ex. 452, letter from Robert A. Hare, M. D., from Washington Sanitarium to Mr. W. C. Kirkpatrick, President, Group Health Association, dated February 8, 1938, was received in evidence, and read to the jury, as follows:

"MY DEAR MR. KIRKPATRICK:

Your letter of February 4 accompanied by an application from Dr. Raymond E. Selders for appointment on the staff of the Washington Sanitarium and Hospital, has been received.

This application will have consideration at an early date and we will notify you of the action taken promptly."

Gov. Ex. 453, letter from Dr. Hare, Washington Sanitarium, to Mr. W. C. Kirkpatrick, Group Health Association, dated February 14, 1938, was received in evidence, and read to the jury, as follows:

"MY DEAR MR. KIRKPATRICK:

In harmony with my recent communication I will state that our Board has considered the application of Dr. Raymond E. Selders which has come to us through your hands.

In view of the fact that there are some problems existing between health groups and physicians, it was voted that the application be tabled, without prejudice, until your organization is recognized or approved by the American Medical Association or its local units. When a suitable plan is worked out in this line of endeavor we will be glad to consider this subject with you again. In the meantime, I am

Very truly yours,"

Gov. Ex. 455, copy of letter from Mr. Kirkpatrick to Robert A. Hare, Washington Sanitarium, dated July 29, 1938, was received in evidence, and read to the jury, as follows:

"MY DEAR DOCTOR HARE:

In view of Justice Bailey's decision yesterday establishing the legality of Group Health Association, Inc., it is

respectfully requested that Dr. Raymond E. Selders, a member of our staff, be admitted to the courtesy staff of Washington Sanitarium and Hospital, and that he may attend members of this Association admitted as patients there.

We shall appreciate the courtesy of an early reply.  
Very truly yours,"

Gov. Ex. 456, letter from Dr. Hare to Mr. Kirkpatrick, dated August 8, 1938, was received in evidence, and read to the jury, as follows:

"MY DEAR MR. KIRKPATRICK:

Your letter of July 28 has been received. Would state that the question you raise will have consideration in due course.

Sincerely, Robert A. Hare, M. D., Medical Director."

Gov. Ex. 457, Mr. Kirkpatrick's letter to Dr. Hare, dated September 16, 1938, was received in evidence, and read to the jury, as follows:

"DEAR DR. HARE:

On August 8, 1938, you advised me that the application of Dr. Raymond E. Selders for admission to the Courtesy Staff of your hospital, which was the subject matter of my letter of July 28, 1938, would have consideration in due course.

I shall appreciate it very much if I may have some advice from you as to what action that may have been taken in the meantime.

Very truly yours,"

Mr. Lewin: May it please the court, I think, in order to make the record clear, I should restate the Government's offer in evidence of those portions of the minutes of the District Medical Society and its executive committee and the documents referred to in and attached to the minutes. I refer, of course, only to those minutes which were identified as such by the defendant Wiprud, and I refer to all of them except the minutes of the Society for January 6, 1937, and March 3, 1937, no portions of which are offered as yet.

The Government's offer includes, and only includes, those portions of the minutes which show the attendance, the fact of participation of all persons present at the meeting, and those portions which show the approval of the minutes of any prior meetings, and all of the portions of the minutes which were read to the jury by Government counsel, whether marked as hereinafter indicated or not, and all portions of those minutes or other papers attached thereto which have been marked with colored crayon in photostatic copies of the minutes; the said photostatic copies of these minutes as bearing these markings being likewise offered merely for the purpose of identifying these portions. All of this evidence was offered and received, as I understand it, against all of the defendants as against whom the court has determined or may determine that a prima facie case as charged in the indictment has been established, either by this evidence or by any other evidence offered or to be offered by the Government in this case.

The Court: If you will pass me a copy of that I will reread it.

(Mr. Lewin handed a memorandum to the court.)

Mr. Lewin: The purpose of offering the photostatic copies, of course, is so that we can avoid marking up the original minutes that belong to the Society.

The Court: Yes, I am assuming that is the purpose. You may proceed.

DR. WALTER ARTHUR COOLE, a witness for the United States.

Direct examination.

By Mr. Allen:

From October 30, 1937 to November 23, 1938 I was Secretary of the Harris County Medical Society. The President of the Harris County Medical Society received a copy of Gov. Ex. 73-A and it came to the Society's attention. I recognize Dr. Holman Taylor's signature on Gov. Ex. 537. I received Gov. Ex. 538. I wrote Gov. Ex. 539. Dr. Talley is chairman of the Board of Censors of the Harris County Medical Society. Dr. Talley's signature appears



on Gov. Ex. 81. Dr. Talley's signature appears on Gov. Ex. 540. I am familiar with Dr. Selders' signature and it appears on Gov. Ex. 541. Gov. Ex. 124 bears Dr. Talley's signature. Gov. Ex. 542 bears Dr. Taylor's signature.

I did not write Gov. Ex. 543 nor did I authorize anyone to sign my signature. It does bear the signatures of Drs. Talley, Foster and Warner. Dr. Selders' signature appears on Gov. Ex. 544. I wrote Gov. Ex. 545. Gov. Ex. 546 bears Dr. Selders' signature. I produced Gov. Ex. 547 in response to a subpoena. I wrote Gov. Ex. 127. I received Gov. Ex. 126 in reply to Gov. Ex. 127. Gov. Ex. 548 bears Dr. Talley's signature. I wrote Gov. Ex. 549. I wrote Gov. Ex. 550. I wrote Gov. Ex. 551. I received from Dr. Selders Gov. Ex. 552. I wrote Gov. Ex. 553. I received from Dr. Selders Gov. Ex. 554. I wrote Gov. Ex. 555. In the regular course of business the Harris County Medical Society kept minutes. I was designated to keep those minutes in 1938. The minutes usually were typed up within a week after the meeting. I prepared and kept Gov. Ex. 556. Gov. Ex. 557, a report of the board of censors dated January 26, 1938, was submitted to the Society and retained as a part of the minutes. Gov. Ex. 558 is the minutes of the regular meeting of the Harris County Medical Society held on March 30, 1938. Gov. Ex. 559, attached to these minutes, is dated March 30, 1938 and is signed by Dr. Talley. Gov. Ex. 560 is the minutes of the regular business meeting of the Harris County Medical Society of April 27, 1938. Gov. Ex. 561 is the minutes of a business meeting of the Harris County Medical Society held on September 14, 1938; Gov. Ex. 562 is the minutes of a business meeting of October 26, 1938. Gov. Ex. 563 is the minutes of a special business meeting of the Harris County Medical Society held on November 23, 1938. Gov. Ex. 564 is the minutes of the regular business meeting held on November 30, 1938. Gov. Ex. 565 is the report of the board of censors of the Harris County Medical Society dated November 22, 1938 and is a part of the minutes.

#### Cross-examination.

By Mr. Leahy:

The only signature I can identify on Gov. Ex. 537 is that of Dr. Taylor. The pencil writing on Gov. Ex. 538 is mine. I cannot identify the signature on Gov. Ex. 542. I have

never seen Dr. Raymond E. Selders write. On Gov. Ex. 543 I cannot identify the signature on the first sheet but I can identify the signatures on the second. I don't remember the original of Gov. Ex. 126 and do not know where the carbon came from. I sent Gov. Ex. 549. I have been a member of the Harris County Medical Society since 1931. The Society was founded in 1892. Under the rules of the Society I was authorized to keep the minutes. I write shorthand and took the minutes down to the best of my ability and within a week wrote them up. The Board of Censors in 1938 were Dr. Talley, Dr. Smith and Dr. Warner. The Board of Censors investigate the conduct of members reported to it. The minutes identified on direct examination were all prepared by me. Dr. Selders was a member of the Harris County Medical Society and is still a member of that Society.

#### Redirect examination.

By Mr. Allen:

I received Gov. Ex. 566. Gov. Ex. 126 is a copy of No. 566. The exhibits numbered Gov. Ex. 537 and 542 were not received by the Harris County Medical Society but were obtained by me from Dr. Taylor as certified copies of the originals.

#### Recross-examination.

I have never seen the originals of Gov. Ex. 537 and 542. I don't know the notary public whose name appears on the bottom of these exhibits and cannot identify them.

#### Redirect examination.

I produced these documents under subpoena as being the best evidence available as to the originals called for by the subpoena.

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GEORGE B. TRIBLE, a witness for the United States.

#### Direct examination.

By Mr. Lewin:

I am a practicing physician in Washington and was so practicing in 1937 and 1938. I specialize in otolaryngol-

ogy, that is, ear, nose and throat. In November, 1937 I operated on a boy, Lewey Gilstrap. I was called in to see the case and found that the parents were members of Group Health. There was no specialist in their group, so that the case had been referred to me. I did an immediate operation consisting of opening the ear drum. The case was taken to Children's Hospital. The patient was X-rayed by Dr. Bierman, which confirmed the diagnosis of an acute mastoiditis. Dr. Macon and Dr. Cohen and nurses were in attendance during the operation and in its course Dr. Scandiffio came in. The patient was taken by me as a private patient. In this case the patient had acute mastoiditis, with an abscess around the big vessel that goes beneath the mastoid bone. The patient made a perfect recovery. I sent my bill to the patient's father and received a check from Group Health. I know Dr. Henry Brown, Medical Director of Group Health, and have been his personal friend for many years. I made a report on the Gilstrap case to Dr. Brown, and identify Gov. Ex. 567 as a copy of the report I gave to Dr. Brown. At the time of the operation I was a member of the District Medical Society and the A. M. A. and was before that time and have been continuously since. I received from Dr. Hooe, Chairman of the Compensation, Contract and Industrial Medicine Committee of the District Medical Society Gov. Ex. 568.

Gov. Ex. 568 received in evidence and read to the jury as follows:

May 14, 1938

"Dr. George B. Tribble  
1801 I St., N. W.  
Washington, D. C.

DEAR DR. TRIBBLE:

You are hereby directed to appear before the Compensation, Contract and Industrial Medicine Committee at the Medical Society Building, 1718 M St., N. W., on Tuesday evening, May 17, 1938 at 8 p.m.

Very truly yours, R. Arthur Hooe, M. D., Chairman  
of the C. C. & I. M. Committee."

To prepare myself for the committee meeting I secured a statement from the parents of the patient and from Dr.

Brown regarding the case. Gov. Ex. 569 dated May 16, 1937, is a statement of Mr. Lewey O. Gilstrap. Gov. Ex. 570, dated May 15, 1937, is a statement of Dr. Brown. I took these statements, being Gov. Exs. 569 and 570, as well as Gov. Ex. 567, and submitted them to the committee, which considered them. The meeting was very short and very informal, with Dr. Hooe, Chairman, Dr. Fred Sanderson, Dr. Paul S. Putski, Dr. Greear, and Dr. Nicholson in attendance.

Gov. Exs. 567, 569 and 570 were offered in evidence. The defendants objected on grounds of incompetency, immateriality, irrelevancy and hearsay. Objections overruled and an exception noted.

Gov. Ex. 567 was received in evidence and read to the jury as follows:

December 20, 1937

"Dr. Henry R. Brown  
Group Health Ass.  
1328 Eye St., N. W.  
City

DEAR DR. BROWN:

Complying with your request for information regarding Lewey Gilstrap, whose father is a subscriber of the G. H. A. and as such is entitled to treatment for his family by the Association, but who was seen by me on several occasions and operated at Children's Hospital as a private patient. He was seen at home on November 22, 23, and 24, a paracentesis being performed on November 23 at the home. This case presented a great many difficulties of diagnosis. The child was very patently sick. He had given a history of previous trouble, which had necessitated several days hospitalization last year. He suffers from enlarged tonsils and adenoids, both evidently infected. He was directed to be brought to this office on November 24, at which time an X-ray was taken by Dr. H. I. Bierman, a copy of which report is enclosed. He was operated on at Children's Hospital on November 25, disclosing a large mastoid abscess which had perforated outer cortex of the mastoid and which corresponded to the painful spot which had been a marked symptom throughout. Cultures from the pus, made in the Children's Hospital laboratory, showed strep hemolyticus. The child made a very good recovery, was

discharged from the hospital in about a week, and comes into this office every other day for treatment.

Sincerely, G. H. Tribble."

Gov. Ex. 569 was received in evidence and read to the jury as follows:

"Affidavit

DISTRICT OF COLUMBIA,  
City of Washington:

Lewey O. Gilstrap, of lawful age, being first duly sworn on oath deposes and says: That to the best of his knowledge he is now a member, in good standing, of Group Health, Inc., Washington, D. C., and that he was such member at all times hereinafter mentioned.

That on the 24th day of November, 1937, it was discovered by doctors in the said Group Health that Lewey O. Gilstrap, Jr., son of affiant, was suffering from mastoiditis; that said Group Health, at that time, had no doctor on its staff who specialized in such cases, and it had no facilities to care for such cases, and affiant was advised by said doctors that it would be necessary to obtain a competent physician in private practice in Washington to attend to the case.

That affiant, having confidence in the ability of Dr. G. B. Tribble in such cases, took his son to the office of said Dr. Tribble on the evening of November 24, 1937 and asked for his advice in the case. That Dr. Tribble examined the boy and advised the placing of the boy in the hospital at once, and on the next morning, and on November 25, 1937 Dr. Tribble performed a mastoid operation on the boy, which operation was entirely satisfactory.

That from the time affiant took said boy to the office of Dr. Tribble, the said doctor considered him a private patient, and was looking to affiant for payment of his fees, and affiant agreed to be responsible for said fees.

Witness my hand this 16th day of May, 1938. Lewey O. Gilstrap. Subscribed and sworn to before me this 16th day of May, 1938. Anthony De Poto, Notary Public."

After the meeting the papers left by me were returned by Dr. Hooe in person, at which time I had a conversation with Dr. Hooe, as follows:



Q. First, do you remember exactly what was said there in every detail?

A. Yes, in every detail. It made quite an impression on me. So I said, "That is fine"; I looked them over. He said, "Well, I am resigning from the chairmanship of that committee". He stated, "You will have to appear before the executive committee." I was a little surprised at that. I hadn't paid any attention to it. I thought it was just a matter of form, of no consequence; I didn't take it seriously. So he said, "You have done wrong" and he said, "If I could see things as he did, and when the time came, to come to him, then I could go to sleep soundly." I didn't have any trouble about sleeping; I didn't think I had done anything to be worried about. We had a long harangue there in my office. I don't recall it in detail. He asked me about Dr. Brown and I told him that I had known Dr. Brown for a great many years; that "he is a very fine fellow". He said, "yes, so was Dillinger; he was a fine fellow too." It continued to get a little more exciting there. He got up and he said, "Well, you will have to be more careful about this society." He said, "The Medical Society",—I don't know, should I repeat what he said?

Mr. Lewin: Well, characterize it; was it some vulgarity?

The Witness: Yes, it was some vulgarity; "That the members of the Society were S.O.B.'s. That they are not fit to lace your shoes, but they will pass judgment on you."

I didn't feel that way about it. I hadn't done any wrong.

Q. What physical appearance did he manifest on that occasion, while he was talking to you?

A. He was walking around, back and forth; excited; I thought he was going to have a stroke.

Q. What was the pitch of his voice?

A. It raised to a crescendo.

This meeting with Dr. Hooe so impressed me that immediately upon his leaving I took a prescription pad and jotted down notes of what transpired. On this occasion Dr. Hooe brought to me Gov. Ex. 571.

Gov. Ex. 571 was received in evidence and read to the jury as follows:

"The Committee hereby charges you with having violated Section 2 of Article 3 of Chapter 9 of the Constitution of

the Medical Society of the District of Columbia, reading as follows:

“Every member of the Society before entering into a contract or agreement for rendering professional service shall submit a copy of his contract, if written, or a true declaration of the terms of the agreement, in writing, to the Committee on Compensation, Contract and Industrial Medicine for approval. In the event that the committee disapproves the contract, a member may appeal to the Executive Committee.’

“And again Chapter 9, Article 4, Section 5, as follows:

“No member of the Society shall engage in any professional capacity whatsoever with any organization, group or individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, which has not been approved by the Society.

“The Executive Committee is authorized and directed to prepare an approved list of organizations, groups and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within 10 miles thereof, and the same shall be kept in the office of the Secretary-Treasurer. Before any such organization, group or individual can be placed on the approved list of the Society, such organization, group or individual, or the member of the Society proposing professional relations therewith, shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require showing the character, activities, financial condition and ethical standards of said organization, group or individual, and after considering the same, said committee shall make a report of its investigation and findings to the Executive Committee for such action as it may deem necessary.

R. Arthur Hooe, M. D. Chairman, Compensation, Contract and Industrial Medicine Committee.”

I later received a letter from Dr. C. B. Conklin on the letterhead of the Medical Society, Gov. Ex. 572.

Gov. Ex. 572 was received in evidence and read to jury as follows:

"May 31, 1938

DEAR DR. TRIBLE:

You are hereby directed to appear before a meeting of the Executive Committee, on Monday evening, June 6, 1938, in the Medical Society Building, at 8 p.m.

Very truly yours, C. B. Conklin, M. D., Secretary."

I obtained statements from Dr. Bierman, Dr. Cohen and the nurse who posted the operation, which I turned over to the Executive Committee. These are Gov. Exs. 573, 574, 575, and 576. These four statements were sent to the Executive Committee with a letter from me, Gov. Ex. 52. After the date of the hearing I received a communication from Dr. Sprigg, the then chairman of the Executive Committee, stating in substance, "Don't do it again," to which I replied, "Your letter received and contents noted. Evil be to him who evil thinks."

The Government then offered in evidence Gov. Exs. Nos. 573, 574, 575, 576, and 52, which were objected to by the defendants on the ground that they were incompetent, irrelevant, and immaterial. This objection was overruled and an exception noted.

Gov. Ex. 573 was received in evidence, and read to the jury, as follows:

"May 21, 1938

DEAR DR. TRIBLE:

Replying to your note regarding the Gilstrap case and the request that you appear before the Committee, I want to say that I went to see Dr. Hooe about this matter. I went to see him because I could not understand how anything could have been considered unethical in regard to our conduct in this case.

I told Dr. Hooe that I had heard you were being questioned about the Gilstrap case and that if you were guilty I was also. I explained to him that you had told me in advance of my X-raying the patient that though the patient had originally been treated at the Group Health he was now a private case and that he would be handled as such, and that I was to send my bill directly to the patient as in all private cases.

Dr. Hooe reacted rather violently to my insistence that I could also be guilty, saying that the patient was referred to

me by a private physician. He would not listen to my statement that I knew in advance that the patient had originally been treated at the Group Health and had been sent to you. His apparent inconsistency and vehement denial of any possibility of my also being guilty seems rather strange to me. I do not understand what is back of the whole matter, but I cannot see where one person could be guilty and another not guilty in exactly the same case when each one acted according to the accepted rules of the Society. It was impossible for me to argue with Dr. Hooe because of his very emphatic stand in the matter.

Is it possible that there may be a personal matter back of the whole affair? The next day after I spoke to Dr. Hooe I met him on the stairs in this building coming from the third floor. I asked him whether he had been to see you in regard to the case and he said he had Not. Later, when I spoke to you, I heard that he HAD been in to see you. I can't understand why he denied having just seen you or why he should make personal visits to a defendant outside of any regularly scheduled hearing and apparently without the knowledge of the remainder of his committee. If I can be of any assistance before the Committee, please feel free to call upon me.

With best wishes, I remain, Sincerely, M. I. Bierman."

Gov. Ex. 574 was received in evidence, and read to the jury, as follows:

"May 23, 1938

DEAR DR. TRIBLE:

In reply to your request for my knowledge of the Gilstrap case let me say first that I am, as you know, opposed to any dealings with Group Health Association or any similar association. I approve of the present policy of the Medical Society in their endeavor to control its member for the good of the Medical Profession and the public.

As far as this particular case is concerned, the simple facts are that before this operation for mastoiditis you frankly stated that it had been a G. H. A. case and was now your private case. I did not then and I do not now see any reason why you could not under these circumstances treat the case.

The investigation itself was conducted in a manner to arouse one's antagonism. On Friday, May 13, 1938, I re-

ceived a telephone message to call a certain number but the individual would not leave his name. To this call I paid no attention. Later he called again and left his name stating that 'I can save the Doctor some trouble if he gets in touch with him.' On getting in touch with Dr. Hooe he stated that he wanted to see me. When I asked him the nature of the business he stated that he could not discuss it over the telephone. I told him I would try and see him but that I was busy at the moment. He then said that 'he would leave it like this, that if I did not see him before noon Monday I would have to appear before a committee Tuesday evening.' As I had no reason not to appear before the committee and as this sounded like a threat I did appear before the committee. Up to that time I did not know the reason I was to appear before them. As Chairman of the Committee Dr. Hooe then told me that in view of your testimony he had no questions to ask me. Another member of the committee then asked me if I had ever received a check from the G. H. A.

I hope this letter may clarify your association with this case and the frank way in which you dealt with it and all other matters in which it has been my pleasure to be connected.

Sincerely yours, Edward B. Macon."

Gov. Ex. 575 was received in evidence, and read to the jury, as follows:

"DEAR DR. TRIBLE:

In so far as I know the Gilstrap child came to us as your semi-private case, and was handled the same as your other cases.

Sincerely yours, Mary O'Sullivan."

Gov. Ex. 576 was received in evidence, and read to the jury as follows:

"MY DEAR DR. TRIBLE:

I recall assisting you do a mastoid operation on or about November 25, 1937, at Children's Hospital. I can not recall the name of the patient, though I understand now that his name was 'Gilstrap.' During the operation I heard you say in effect that the patient was originally a member of the Group Health Association and that you had seen him



through Dr. Scandiffio. You stated that at first you had not wanted to take this case, but that you had finally agreed to accept him as a private patient of your own because the nature of the illness was so acute as to require immediate operation.

Dr. Scandiffio was present for a short while after the operation had gotten under way.

Truly yours, A. Cohen, M.D."

Gov. Ex. 52 was received in evidence, and read to the jury, as follows:

"MY-DEAR DOCTOR CONKLIN:

It is a source of regret that I am unable to appear personally Monday night, but inasmuch as there has been, to my mind, no offense, no defense is contemplated. The facts relative to the G. H. A. are as follows:

The former Medical Director, Doctor Brown, and I have been friends for years. I have treated him and his family and naturally, when he accepted the position as head of that organization, he asked me if I would consider a consultantship. I replied that if, and only if it were acceptable to the laws of the District and the by-laws of the Medical Society. He said he felt it was and wanted to cooperate and act under such laws, but seeing how I felt, he let the matter drop. I have not even seen his clinic.

The Torch Club here asked me to present the organized medicine side of a debate. I told Mr. Elwood Street that I would be glad to help, but I was no speaker and suggested Dr. Christie, Dr. McGovern and Dr. Bennett. Then they thought it would be a good idea to have G. H. A. represented, so I asked Dr. Brown. He did not get in for dinner and for only a part of the debate and declined to speak. Dr. Christie and Dr. Bennett spoke and made a good impression on a hostile audience. I was warned after that, by two of my associates, that I was under suspicion and would be in trouble being seen with Doctor Brown. Inasmuch as he is a doctor, a gentleman and a friend, I have felt it a matter of personal privilege and not a regulatory affair.

With a number of constituents ranging from 1500 paying members up to 2500, and their dependents, all multiplied by three, there naturally arose many cases in all fields. Knowing my attitude in this matter, they purposely were not referred to me. During all this time, to the best of my knowl-

edge, two surgical cases came to me, one the case in question and the other an antrum case operated at Garfield also as a private patient, but who stated she was eligible for clinic and treatment and thought they should settle her bill. A dentist named Cling was also in this case. She found she was not eligible for treatment and personally paid her bill, as I told her I expected. She made two payments, one of \$100 and one of \$75. At the time she was operated on, I told the anesthetist her claim, but that I had no connection with nor accepted any responsibility from that organization and looked to her personally for payment. She was also X-rayed by Dr. Bierman and treated just as any other case. She has left her job and cannot be contacted. Several patients among my clientele at different times told me they were eligible for treatment, but I sent them all bills which they paid.

Reverting to the Gilstrap case, there was no connection with the G. H. A. and the patient was handled as any other, arrangement made from the office for it, as is always done. I mailed the bills to the patient regularly, not discounted, but based on the Mayo plan, the same as all other major operations. Later, after several months, it was paid from the G. H. A. There was no rule at that time that such checks should not be accepted. They were so accepted by many members of the society, though I have been told by two, who had similar cases, that they called the committee before accepting them. Referring to the by-law regarding an individual not on the accepted list, I note that both you, Mr. Secretary, and I, treated Dr. Penhallow's children and I understand this rule was put in to prevent his contact with members of the District Society. It is remarkable that I have never got any pay cases from him or his clinic. Evidently they are treated by other specialists.

Then I was called before the committee. I had only a half hour. I simply told them, as I said, that I felt I needed no defense, nor do I feel so now, and went away.

Referring to the case at Childrens Hospital, Dr. Scandifio called me regarding this case and requested permission to be present at the operation and was present for a short time about the middle of the surgical procedure. He was at that time a member of the District of Columbia Medical Society.

With reference to the claim by the chairman of the Committee on Contracts, etc., who stated that the letter in re-

sponse to a request from Doctor Brown constituted a validity to the charge, I was cooperating with them, I think the rule was that phone calls or letters reporting on such cases were permissible to other than members of the Society, but personal consultations were not. I considered this request the same as from an insurance company and so replied. I replied by letter rather than by phone so that a record could be kept. It stated clearly that this was a private case.

The chairman of the contracts committee brought back the papers I had submitted, made a long harangue in my office, about which I immediately jotted down notes, and ended by saying if I could see things as he did, and when the time came, to come to him, then I could go to sleep soundly. I was also told that the Society was full of s. o. b.'s and a s., but they would sit in judgment on me, though they were not worthy to lace my shoes. I told him I did not feel that way about them and a difference of opinion was understandable.

Now there is no defense for there is no offense that I can see. I am submitting herewith certain papers to be presented for the committee. If there be any offense I am sorry and accept full responsibility, for in the case of the X-ray man and the anesthetists, I told them the circumstances and felt these were private patients, and they felt as I.

I have deep regard for the Society and live up to its rules. I resigned as a Commander in the Medical Corps of the Navy and threw my lot with you. I know state controlled medicine as but few do, and I realize its good points and its bad ones. The men in the military services are high-class men and I have always stood up for them, so much so I am called 'The Admiral' in some ridicule. It is a bad bird that soils its own nest. I stand for the District now as I stood for them and I regret if in any way I have been at fault. I do resent and have resented any infringement on personal social contacts and so do you. If there are any points I can elucidate further I will be glad to do so, but no defense is being submitted, for the facts are as I state them and I will be glad to have this passed upon by the judiciary council of the A. M. A.

In passing, you will note that the famous Gilstrap case was treated in semi-private accommodations and kept in the hospital a minimum of time following the mastoidectomy. This should point conclusively to the truth, which is that

he wished the expenses cut down to the minimum as he fully expected to bear them himself.

Very sincerely, G. B. Tribble."

Gov. Ex. 37 read from to the jury as follows: "Minutes of the meeting of the Executive Committee of the Medical Society held June 6, 1938."

"First is the letter from Dr. Hooe to the chairman of the executive committee of the District Medical Society, who was Dr. Sprigg, dated May 18, 1938. It reads:

'DEAR DOCTOR SPRIGG:

A letter addressed to Dr. George B. Tribble, under date of May 14, 1938, and sent by registered mail, follows:'

And then he quotes the first letter, which has already been read to the jury. Then the following appears:

'Accordingly upon convening Dr. Tribble was presented with the following charges, in writing:'

And then follows that letter, Gov. Ex. 571.

'Please find herewith attached complete transcript of the proceedings together with a true copy of a business card filed in the office at Children's Hospital.

In view of the evidence as therein set forth and in particular consideration of the correspondence therein contained as having occurred between Dr. George B. Tribble and Dr. Henry Rolf Brown, Medical Director of Group Health Association, Inc., we desire to submit to your committee our verdict of guilty as charged, (possibly unwittingly), with the recommendation that such disciplinary measure be in turn recommended to the Medical Society as may seem commensurate with the gravity of the offense.

Respectfully submitted, (Signed) R. Arthur Hooe,  
M. D., Chairman, Compensation, Contract and Industrial Medicine Committee.'

'The complaint against Dr. George B. Tribble was taken up at this point.

'Dr. Sprigg, chairman, presiding, there were present:

'Drs. A. B. Bennett, Daniel L. Borden, C. N. Chipman, Harry Lee Claud, A. C. Gray, Raymond T. Holden, Jr., Thomas E. Neill, John A. Reed, E. Hiram Reede, Sterling Ruffin, and Mr. Theodore Wiprud, Executive Secretary.

'The minutes of the preceding meeting of April 25 were read and approved.



'Dr. Sprigg then introduced the new Executive Secretary to the Committee. He also introduced Dr. Fred R. Sanderson, representing the Compensation, Contract and Industrial Medicine Committee. The Chairman, Dr. Sprigg, said, was unable to attend.

'The executive secretary then read a letter from Dr. R. Arthur Hooe, Chairman of the Compensation, Contract and Industrial Medicine Committee, and the transcript of the hearing held by the Committee in connection with charges made against Dr. George B. Triple.

'The Chairman stated that Dr. Edith Seville Coale wished to be heard, and suggested that the complaint against Dr. Triple receive attention later in the meeting. This was agreeable to the Committee.'

• • • • •  
'Dr. Sprigg made a brief statement setting forth his views on the behavior of the Doctor.

'Dr. C. N. Chipman reported that Dr. Macon was waiting to be heard.

'The Chairman was rather surprised and said he did not know that either Dr. E. B. Macon or Dr. George B. Triple had been invited to attend.

'Dr. E. B. Macon was invited into the meeting and informed by the Chairman that an error had been made and that the Committee did not desire to hear him. The Chairman apologized for causing him inconvenience.

'Some discussion then followed as to the letter Dr. Macon had received from Dr. C. B. Conklin, informing him that he was to be on hand. This letter was circulated among the Committee.

'Upon Dr. Macon's retirement further discussion was held.

'Motion made by Dr. E. Hiram Reede that the letter directed to Dr. Macon be placed in the record of these minutes and that Dr. Sprigg's comments also be included. Motion seconded by Dr. Holden and carried.

'There followed a discussion as to the advisability of inviting Dr. Triple to a special meeting to be called by the Executive Committee for the purpose of hearing him.

'Dr. A. B. Bennett then stated that he had a letter from Dr. Triple, directed to the Secretary of the Society, also original letters in connection with the complaint which Dr. Triple wished returned to him.



'Dr. Sprigg did not think that this material should be introduced at this meeting. However, committee members were not in agreement on this matter.

'Motion made by Dr. John A. Reed that the letter directed to the Secretary by Dr. George B. Tribble be read. Motion seconded by Dr. Holden and carried.

'Dr. F. X. McGovern requested the privilege of the floor and commented briefly on the letter received from the Compensation, Contract and Industrial Medicine Committee, in which the committee had found Dr. Tribble guilty of unethical conduct. He said that the Committee was out of order in passing judgment; that it was merely a fact-finding committee.

'Dr. Tribble's letter was read following which there was considerable discussion.

'Motion made by Dr. Holden that the Executive Committee finds Dr. Tribble's explanation adequate and his assurance that he will not in any way knowingly violate the ethics of the profession or the Constitution and by-laws of the Medical Society in the future satisfactory. For this reason it is their decision that the matter be carried no further; and that Dr. Tribble be informed of the Committee's action. Motion seconded by Dr. Chipman and carried.

'There followed a discussion as to whether or not a physician who treats a patient who is a member of the Group Health Association, Inc., as a private case, but accepts payment from the Group Health Association, is guilty of unethical conduct.

'Dr. Sprigg, in a statement based on the information given him by the Society's attorneys, stated that under these circumstances he would be guilty.

'This was denied by Dr. C. N. Chipman who said that the Executive Committee already had gone on record in resolution, stating that such a relationship was not unethical.

'Dr. F. X. McGovern reviewed the past efforts of himself and his Committee to have the Society take a definite stand on the Group Health Association, making its position clear; that so far he had not been successful in getting the Society to act.' "

Cross-examination.

By Mr. Leahy:

The letter I received from Dr. Sprigg I threw away. After the first informal meeting I was advised by Dr. Hooe

that the charges were sent on to the Executive Committee. I never appeared before that Committee but merely turned my letters over to them and they found everything was all right and that was all there was to it.

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ELEANOR HALL, a witness for the United States.

Direct examination.

By Mr. Allen:

I am a clerk in the record room of the Eastern Dispensary and Hospital. I have held that position for four and one-half years. Gov. Ex. 579 is a copy of the rules and regulations of the Medical Staff in operation at that hospital from January 1, 1937, to December 20, 1938. The handwriting on the questionnaire, marked Gov. Ex. 309, is that of Dr. J. Rogers Young.

Cross-examination.

By Mr. Leahy:

The rules and regulations (Gov. Ex. 579) in force in 1937 were in force in 1938, and are still in force. Dr. J. Rogers Young is Chief of Staff at Casualty and he is in the city now.

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ANNA MARY DENNINGER, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I have been employed by Dr. Mann for eleven years. The handwriting on Gov. Ex. 300 and 301 is that of Dr. Mann.

Gov. Exs. 309, 310, 300, 301, and 579 were offered in evidence. These exhibits were objected to on the ground they were incompetent, irrelevant, and immaterial, as no conspiracy had been shown to exist, and that the proof failed to show that Casualty Hospital and Sibley Hospital were parties to any conspiracy and hearsay. These objections were overruled and exception was allowed.

Gov. Exs. 309 and 310 were received in evidence and read to the jury as follows:

Mr. Kelleher: Exhibits 309 and 310, is the questionnaire with the name "Casualty" at the top, and it has been identified as having been written by Dr. Young, the defendant, chief of staff of Casualty Hospital.

"Questionnaire.

1. What communication or inquiry has your hospital had from Group Health Association, Inc.?

None.

2. What reply has your hospital made to Group Health Association, Inc.?

None.

3. Which, if any of the following Doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital? Dr. Henry Rolf Brown, Dr. Allen E. Lee, Dr. Mario Scandiffio, Dr. R. Stephen Hulburt, Dr. Raymond E. Selders, Dr. Edmond D. Wells.

None.

4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

Yes.

5. Is the entire Medical Staff of your hospital reappointed annually?

Yes.

6. Are appointments to the Medical Staff of your hospital approved by the Medical Staff?

Yes.

7. What governing body of your hospital finally makes appointments to the Medical Staff?

Lay Board.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

Applicant must be qualified for membership in local Society.

9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

10. Does your hospital require membership in the A.M.A. as a qualification for appointment to its Medical Staff?  
See No. 8.

11. What percentage of the entire Medical Staff of your hospital are members of the A. M. A.?

12. Is your hospital a beneficiary of Community Chest funds?  
No.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?"

Mr. Kelleher: Exhibit 579 has been identified as the by-laws of Eastern Dispensary and Casualty Hospital. The Government has offered in evidence Article 2, Section 1, which reads as follows:

"Article 2, membership.

Section 1—Qualification

The applicant for membership shall be a graduate of a recognized medical school, legally licensed to practice in the District of Columbia, qualified for membership in the Medical Society of the District of Columbia."

Mr. Kelleher: Gov. Exs. 300 and 301 is the questionnaire with the word "Sibley" at the top. The answers have been identified as having been made by Dr. Jesse T. Mann.

"Questionnaire.

1. What communication has your hospital had from Group Health Association, Inc.?

Asking to admit pt. and those pt. be treated by Dr. Selders.

2. What reply has your hospital made to Group Health Association, Inc.?

Non-committal reply.

3. Which, if any of the following doctors are now members of your Medical Staff in any capacity or have privileges to practice in your hospital?

Dr. Henry Rolf Brown—Yes

Dr. Allen E. Lee—Yes

Dr. R. Stephen Hulburt

Dr. Raymond E. Selders

Dr. Edmond D. Wells.

4. Is your hospital in sympathy with the policies of the Medical Society of D. C.?

Yes.

5. Is the entire Medical Staff of your hospital reappointed annually?

No.—only 25 members of the Medical Council.

6. Are appointments to the Medical Staff of your hospital approved by the Medical Staff?

Approved by Medical Council.

7. What governing body of your hospital finally makes appointments to the Medical Staff?

Recommended by Medical Council and appointed by Board of Directors.

8. Does your hospital require membership in the Medical Society of D. C. as a qualification for appointments to its Medical Staff?

No.

9. What percentage of the entire medical staff of your hospital are members of the Medical Society of D. C.?

Majority—about 80%.

10. Does your hospital require membership in the A. M. A. as a qualification for appointment to its Medical Staff?

No.

11. What percentage of the entire Medical Staff of your hospital are members of the A.M.A.?

About 80%.

12. Is your hospital a beneficiary of Community Chest funds?

No.

13. Will you kindly make any other inquiry that you think might be pertinent at this time?"

Goy. Ex. 521 was received in evidence and read to the jury as follows: "Minutes of the regular meeting of the Board of Directors of the Children's Hospital of the District of Columbia of November 15, 1937."

"Mr. Drayton read a letter from the Group Health Association with regard to permitting their physicians the courtesy staff of the Hospital—they not being members of our Staff. Mr. Drayton also read a proposed letter from Miss Gibson in answer thereto. The Board approved the proposed letter. Mr. Seal voting present."



The letter attached thereto, dated November 15, 1937, from Mattie M. Gibson, Superintendent, to William F. Penniman, Group Health Association, was read to jury, as follows:

"DEAR MR. PENNIMAN:

At a meeting of the Board of Directors of the Children's Hospital, held November 15th, I was authorized to reply to your letter of November 8th as follows:

The Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its charter, rules and regulations.

This pertains to indigent, semi-indigent, and a very limited number of pay patients—as we have only twenty-seven beds available for pay patients.

All doctors treating these patients while in the hospital must have staff appointments and be members of local Medical Societies.

Dr. Raymond E. Selders has made no application so far for staff appointment."

Mr. Allen: If it will be satisfactory to defense counsel I will not read Exhibit 359, which is a letter sent by Miss Gibson to Mr. Penniman, dated November 16, 1937. It is quite similar to the one attached to the minutes and approved, with the exception that it doesn't have the words "and be members of the local medical societies".

Gov. Ex. 359 was received in evidence and read in part to the jury, as follows:

"November 16, 1937.

MR. PENNIMAN:

All physicians treating patients while in the hospital must be members of the Medical or Courtesy Staff, appointments to which are made annually by its Board of Directors after individual examination into the qualifications of applicants by regular hospital channels.

Miss Gibson."

Gov. Ex. 522 was received in evidence and read to the jury, as follows: "Minutes of the annual meeting of the incorporators and members of the Children's Hospital of the District of Columbia of December 6, 1937.

"Upon proper motion, duly seconded, it was unanimously voted to amend Article 33, Medical Staff—of the By-Laws and Rules by adding the following:

Only physicians, surgeons, and dentists who are licentiates of the District of Columbia and also members of the District Medical Society or ethical body in their locality shall be eligible for appointment to the Medical Staff.

Physicians, Surgeons, and Dentists not officially connected with the Hospital, but members of their ethical medical societies, may be accorded the privilege of using the facilities of the Hospital as a matter of courtesy for a term that shall continue during the pleasure of the Board of Directors, those accepting such privileges to be known as the Courtesy Staff."

Gov. Ex. 523 was received in evidence and read to the jury, as follows: "Minutes of the meeting of the medical staff of the Children's Hospital of April 4, 1938.

"Dr. Wall mentioned the letter written by Dr. Drayton to Senator Capper,—

Senator Capper is written in handwriting and the words 'the newspapers' is stricken out.

—relating to the Group Health situation. Dr. Wall stated that the Board of Directors had supported the Medical Staff in the differences over Group Health.

Dr. Wall presented a resolution formulated to take care of emergency admissions to the Hospital. It was moved and seconded that this ruling be adopted. After discussion by several members of the Staff, the ruling was adopted.

Dr. Hagner moved that the Chairman of the Medical Staff get together with the Chairman of the Medical Staffs of other hospitals to adopt uniform rules covering the admission of Group Health patients. Seconded and carried."

MRS. CAROLINE REECE EPPERLEY, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am secretary to the superintendent of Sibley Hospital. A record is kept of every case coming into the hospital. A

record is kept for each patient, known as a patient's record, including patients on whom surgical operations are performed. In the regular course of business records of pathological laboratory examinations are kept. I identify Gov. Exs. 580, 581, and 582 as the patient's record, the operative record, and the report of examination of tissue, pathological laboratory, respectively, of Mr. Charles Hardin. The Medical Council of Sibley Hospital is an organization of the doctors that serve in the various departments, and is composed as a part of the clinical staff chosen from the regular or attending staff of the hospital. Dr. Thomas E. Mattingly is a member of that staff, and was in 1937 and 1938, and also was a member of the Medical Council. Dr. J. T. Mann is on the Medical Council of Sibley Hospital and was on that Council in 1937.

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MRS. CHARLES HARDIN, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I was a member of Group Health Association in 1937 and reside in Arlington, Virginia. I had a family membership in Group Health entitling my husband to benefits. On June 19, 1938, my husband became ill and late Sunday night the pain became severe and it was necessary to call in Dr. Solet. Dr. Solet examined Mr. Hardin and asked that a surgeon be called in. A surgeon, Dr. Bachrach was called in. Mr. Hardin was taken to Sibley Hospital. Before leaving for the hospital I telephoned my brother, a charter member of Group Health, to meet me at the hospital, which he did. Mr. Hardin was operated on at the hospital. Prior to the operation I had a telephone conversation with Dr. Selders, the Group Health surgeon. The patient was operated on by Dr. Bachrach.

Q. What instructions, if any, did you give the cashier of the hospital concerning your hospital bill after your husband had recovered from his operation?

The defendants objected on the ground of incompetency, irrelevancy, and immateriality, and that whatever answer the cashier of the hospital gave would be hearsay and not the proper way of showing the instructions given her by the

hospital. These objections were overruled and an exception was allowed.

A. I asked that she send the bill to Group Health Association, of which I was a member.

Q. What was her response?

The same objections, which were overruled with an exception.

A. She said that she had contracted with me and not with Group Health, and therefore it was my bill, and she had nothing to do with Group Health.

Q. How did you pay the bill?

A. In cash, which Mr. Kirkpatrick gave me.

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SHERWOOD K. BOOTH, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I live in Arlington, Virginia. In June, 1938, I was a member of Group Health. On June 19 I received a telephone call from my sister and as a result went to Sibley Hospital to see her and my brother-in-law, who was going there for an emergency appendicitis operation. My sister's name is Mrs. Charles G. Hardin, Jr. On arriving at the hospital I spoke to the night supervisor, Miss Realini, to ascertain whether Dr. Selders, chief surgeon of Group Health, would be permitted to operate on my brother-in-law.

Q. Will you continue with your testimony concerning this conversation with Miss Realini?

This question was objected to on the ground that the answer would be incompetent, irrelevant, and immaterial, would be hearsay, and that it was not the proper way to show the attitude of the hospital. These objections were overruled and exceptions were allowed.

The Court: Objection overruled. Can you identify the doctor in the case, if a doctor's name was mentioned?

Mr. Leahy: Some young lady, he is talking about.

The Court: This gentleman said that he inquired of this lady about the Group Health doctor. I was wondering whether the name of a particular doctor was mentioned.

By Mr. Kelleher:

Q. Was the name of a particular doctor mentioned?

A. Yes; it was.

Q. What was the name of the doctor?

A. The name of the doctor was Dr. Selders, who was at that time the chief surgeon on the staff of Group Health Association.

Q. Will you continue with your testimony concerning this conversation with Miss Realini?

A. As soon as my brother-in-law arrived there I immediately went to the desk on his behalf to find out whether it would be agreeable to the hospital to have Dr. Selders operate on him. Miss Realini replied that she was very sorry, but that Group Health doctors were not permitted to operate in that hospital. I explained to her the emergency of the case, but from the circumstances she was well aware of that. But she said it did not make any difference whatsoever, regardless of the events; she was terribly sorry, but she was without authority to permit a Group Health doctor to come in there.

I mentioned the fact that Dr. Selders was the name of the doctor who was to do the operating. She again reaffirmed her previous statement and, as I recall, she had a slip of paper on the desk, on her side of the desk, and she referred to that, and upon doing so she again stated that she was awfully sorry, but Dr. Selders would not be permitted to operate.

In Miss Realini's presence I called Dr. Selders on the telephone.

The defendants at this point objected to any conversations between the witness and Dr. Selders over the telephone on the ground they would be pure hearsay, incompetent, irrelevant, and immaterial.

The Court then inquired of the witness if the substance of the conversation was conveyed to the lady and, upon being informed that it was, overruled the objection, allowed the defendants an exception, and the witness then testified as follows:

I mentioned to Miss Realini that Dr. Selders said he could come here in ten minutes and operate on the patient. Thereupon Miss Realini replied that she was terribly sorry



but, as she said before, he could not operate. Thereupon Dr. Selders asked me over the phone to hand the phone to Miss Realini.

Over similar objections of the defendants, to which an exception was allowed, the Court permitted the witness to testify as follows:

Q. Did you tell Miss Realini that Dr. Selders wanted to speak to her?

A. Yes.

Q. Did she take the telephone and speak to Dr. Selders?

A. Yes. I was sitting in front of Miss Realini, and I handed the 'phone over to her and she spoke to Dr. Selders in my presence.

Q. What did she say?

A. She told Dr. Selders, in a very congenial way, but very firmly, that she was terribly sorry, but that he would not be permitted to operate in that hospital, being a Group Health doctor.

Q. Did she have this slip of paper which you mentioned before?

A. She did. She still had that in front of her.

Q. Was there anything more said?

A. I don't think so. The conversation, of course, was between them, and I heard her end of the conversation.

Q. After this conversation did you receive another telephone call?

A. Yes. The 'phone was no more than hung up and it rang again and it was Dr. Selders calling back and he asked to speak to me.

Q. Did you speak with him?

A. I did.

Q. Did you tell Miss Realini what Dr. Selders said on this occasion?

A. I did.

Q. Will you tell us what you told Miss Realini Dr. Selders said?

A. Yes. I told Miss Realini that Dr. Selders called again wanting to discuss the advisability of having the patient moved to Casualty Hospital; that Dr. Selders had told me that if the patient were moved there there was a reasonable likelihood that he could operate on the patient at Casualty Hospital; he was not sure, but he thought he might be able to make such arrangements.

Q. What did Miss Realini say?

A. Miss Realini did not have much to say. Of course she understood it was——

Mr. Leahy: I object to the conclusion.

The Court: What did she say?

The Witness: She had nothing more to say to that except that I mentioned to her that I was awfully sorry that the Group Health doctor could not operate, and she again explained her position, that she was the night supervisor of the hospital, but she had her orders as to those who were on the courtesy list and she was sorry, but there was nothing she could do about it.

My sister talked over the telephone with Dr. Selders in my presence and in the presence of Miss Realini, and my sister said to Dr. Selders that the doctors had told her that Mr. Hardin should be operated on immediately; that they were taking his blood count, were preparing him for an operation, and she explained to Dr. Selders that it wouldn't be reasonable to move the patient. After these telephone conversations Mrs. Hardin authorized Dr. Bachrach to operate on her husband. "It was understood, however, from my conversation with my sister, that this doctor, Dr. Bachrach, would be given the authority to operate in the event that we were unsuccessful in having the hospital's permission to have a Group Health doctor operate."

Cross-examination.

By Mr. Leahy:

I didn't know Dr. Bachrach personally. I didn't know my brother-in-law was sick before being notified by telephone. I arrived at the hospital close to midnight on Sunday; a minute or two later my brother-in-law and my sister arrived with Dr. Solet, concurrently Dr. Bachrach came in. While I was talking on the telephone to Dr. Selders, Dr. Bachrach was upstairs with my brother-in-law, though I am not sure about this, though word came down that the operating room was being prepared and that a blood count was being taken. I received word that an operation was so imminent I didn't feel that my brother-in-law should be moved from one hospital to another. When I talked to Miss Realini, the night supervisor or superintendent at the hospital, she told me that Dr. Selders couldn't operate because he

was not on the courtesy staff. I didn't know Dr. Solet before that evening. My brother-in-law was operated on by Dr. Bachrach, and he was out of the hospital in a week's time.

Gov. Exs. 580, 581, and 582 were offered in evidence. Defendants objected on the ground that these papers were incompetent, irrelevant, and immaterial. Objections overruled and exception allowed.

Gov. Ex. 580 was received in evidence and read to the jury, as follows:

**"Sibley Memorial Hospital  
Patient's Record**

Adm. No. 128467

Adm. Date 6-19-1938, at 11:45 p. m.

Dis. No. G 3724

Dis. Date 6-25-38

Name, Mr. Charles Hardin, Rm. No. 201 M  
Street and No. 212 N. Piedmont St., Arlington, Va.  
Occupation, Salesman. Age, 25. Nationality, Miss.  
Reference, Mrs. Helen Hardin. Relationship, Wife.  
Street and No. 1.

Doctor Bachrach. Admitted by M. Realini.

Diagnosis: Acute appendicitis.

Condition on discharge, improved.

Operation: Appendectomy.

Record prepared by Menke, Intern.

Edited and approved, Leo Solet, M. D. Attending physician."

Gov. Ex. 581 was received in evidence and read to the jury, as follows:

**"Sibley Memorial Hospital  
Operative Record**

Case No. 128467

Date, June 20, 1938.

Name, Mr. Charles Hardin. Location 201 M.

Preoperative Diagnosis: Appendicitis.

Postoperative Diagnosis: Same.

Surgeon, Dr. Bachrach.

Anesthetist, Dr. Katzman.

Operation: Began 12:15 a. m., closed 1:10 p. m.

Condition during anesthesia: Good.

Immediate postoperative condition: Good.

Operation: Appendectomy.

Signature of Operator, L. Bachrach."

Gov. Ex. 582 was received in evidence and read to the jury, as follows:

"Sibley Memorial Hospital, Pathological Laboratory, Report of Examination of Tissue

For Dr. Bachrach. Patient's name: Mr. Charles Hardin.

Date 6-23-38. Date received 6-20-38.

Hospital Number 128467. Lab. Number 16467.

Material Appendix 201 M.

Clinical Diagnosis or comment: Acute appendicitis.

Sections: Frozen. Embedded —.

Diagnosis: Acute Catarrhal Appendicitis.

Tissue Description: The appendix is highly congested and covered with dilated vessels as well as tortuous ones of long-standing. The organ measures 8 cm. in length by 0.9 cm. in diameter and on section cuts with slight resistance revealing an ovoid, broadly dilated lumen filled with catarrhal exudate. The mucosa is partially eroded and the submucosa and muscular coats are thickened and edematous. The picture presented is that of an acute exacerbation of a chronically inflamed organ.

Reported:

Oscar B. Hunter, M. D., Pathologist."

JAMES ROBERT ADAMS, a witness for the United States:

Direct examination.

By Mr. Kelleher:

I live in Washington. I know Miss Elizabeth Tew. About seven o'clock on the evening of February 26, 1938, I received a telephone call requesting that I go with Miss Tew and Miss O'Connor to the hospital. I called a cab, went to Miss Tew's apartment, assisted her into the cab and went to the Garfield Hospital, where arrangements were made for her entry. An interne made an examination of Miss Tew, at 8:15 p. m. she was given an injection of morphine. At 10 o'clock Dr. Selders and Miss O'Connor came to the



room and said the operation would not be performed that night. Thereafter Dr. Dugan and a nurse came into the room and said that the privileges of the hospital had not been extended—

To this portion of the answer objection was made on the ground that it was incompetent, irrelevant, and immaterial, and hearsay, which objection was overruled and exception noted, and the witness testified as follows:

I thought Dr. Dugan was a hospital physician and he said that the privileges of the hospital had not been extended to Dr. Selders, since he was a member of Group Health, and that the operation could not be performed by him, and offered the facilities of the staff at Garfield, which Miss Tew refused. Dr. Dugan then asked Miss Tew to sign a release in order to leave the hospital, which, upon advice, she refused.

Miss Tew, on receiving morphine, lost consciousness for about 30 minutes and otherwise was in a semi-stupor and was in a stupefied condition when Dr. Dugan came into the room. The release, Gov. Ex. 584, was read out aloud in my presence. At 11 o'clock Dr. Dugan returned and again offered the services of the staff and suggested that Miss Tew secure the services of another surgeon. At 12 o'clock I left the room, Miss Tew was dressed, a wheel chair was brought in, and Miss Tew was taken to the front door. A cab was called and was waiting. It was necessary for Miss Tew to sit upon the steps of the hospital before entering the cab because she was more or less nauseated. She sat on the steps 10 or 15 minutes and then proceeded to her home, where she was put to bed with ice packs.

#### Cross-examination.

By Mr. Leahy:

A telephone call was received by me from Miss Davis or Miss O'Connor. I have known Miss O'Connor since 1936. Miss Davis and Miss O'Connor are the same person, as she uses the name of Miss O'Connor around the office where she works, the Works Progress Administration, where I also work. I knew Miss Tew through Miss Davis, about a year and a half. Miss Tew and Miss Davis had an apartment together. I didn't know Dr. Selders personally and never saw him before that night. I don't know anything about



the courtesy staff at the hospital. Miss Davis entered Miss Tew on a Group Hospitalization card. On admission Miss Tew was immediately assigned to a room and preparation begun for an operation. Dr. Dugan examined Miss Tew. Two examinations were made of Miss Tew by internes. Dr. Dugan said that Dr. Selders was not on the courtesy staff and couldn't operate because he was not on that staff. Dr. Dugan offered to Miss Tew anyone on the staff at Garfield to operate, but Miss Tew replied, "No," she wouldn't take anybody from the staff of Garfield. Miss Tew stated she wouldn't have any one of the doctors operate and, if necessary, she would leave the hospital, and about two hours after that she left the hospital. Dr. Dugan read aloud the release he wished Miss Tew to sign; but Miss Tew refused to sign the release on advice of Dr. Selders and Miss Davis. About midnight a wheel chair was obtained for her; she was taken to the outside door, on the porch. She sat on the steps of the porch for about 10 minutes with me and Miss Davis, with the cab waiting there. No one was asked to go back in the hospital, and the three of us just sat and waited and were unable to get Miss Tew into the cab, as she was nauseated and sick. Ten or 15 minutes later she was taken home, assisted into her apartment, prepared for bed, and an ice pack was placed on her. Dr. Selders returned to the room before she left the hospital. About 11 o'clock Dr. Dugan reoffered the facilities of the staff of the hospital to Miss Tew and made the suggestion that she have another examination by another physician and surgeon. A half an hour after I had brought Miss Tew home I left her at her apartment and that ended the matter so far as that night was concerned.

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PEGGY O'CONNOR, a witness for the United States:

Direct examination:

By Mr. Kelleher:

I am sometimes known as Miss Davis. In 1938 I lived with Miss Elizabeth Tew. On the 19th of February Miss Tew became ill, went home to bed and called in a Group Health doctor, as she was a member of that organization. The doctor felt the case called for an operation and called Dr. Selders, a surgeon, who made an examination. Miss

Tew had appendicitis; she was taken ill Saturday afternoon and on Sunday the doctor was called in, and then the surgeon came within an hour. An ice pack was placed on her stomach and side. She remained in the apartment four or five days and Dr. Selders was called again. He saw her every day, and the case had subsided. Later in the week Miss Tew became worse and I then called Group Health, telling them I thought something should be done, as Miss Tew had been lying there with soups and liquids and water. On February 26th Miss Tew and I went to Garfield Hospital, at Dr. Selder's direction. At the desk I entered Miss Tew and I had her credentials showing that she was a member of Group Health. She was assigned to a room. An interne then examined Miss Tew and then another doctor came in, Dr. Dugan, and gave her a thorough examination. Miss Tew was then given morphine, became unconscious, and went out of her head. I then went to the desk and was told that Dr. Selders was in the operating room. I went to the operating room, where Dr. Dugan and Dr. Selders were both dressed for an operation. I asked what was prolonging the operation and Dr. Selders said he was not permitted to operate because he was a member of the staff of Group Health. Dr. Dugan said, after examining the case, he didn't find it acute. Dr. Selders stated, "He refuses to let me operate until he gets authority." I said, "This is no time to argue whether it is acute or not acute. Dr. Selders has examined her and pronounced it acute and I wish something could be done." Dr. Selders then said to me there was nothing he could do and said, "It is definitely acute." Dr. Dugan walked into Miss Tew's room, stating he would like to offer her the services of someone on the hospital staff and that he wanted her to sign a release. I refused to let Miss Tew sign the release as she didn't know what she was doing. Miss Tew asked if it was necessary to sign it in order to leave, and Dr. Dugan said no; it was not necessary. I then called a cab. Dr. Dugan returned to the room a second time after reading the release. A wheel chair was brought; she was put in it and wheeled to the front entrance, where she fainted on the steps. Miss Tew remained 15 or 20 minutes on the steps. She wasn't conscious until she arrived at her apartment, where she was practically carried in by Mr. Adams and me and put to bed with an ice pack.

## Cross-examination.

By Mr. Leahy:

I was rooming with Miss Tew when the latter was taken sick. I have known Mr. Adams for four or five years and we were very good friends. We were going together at the time. I called Mr. Adams the night Miss Tew went to the hospital. Miss Tew had been sick for about four or five days. Some one of the Group Health doctors had diagnosed her case as appendicitis a week before she was taken to the hospital. Dr. Selders left her in her apartment approximately four days, the reason being that he didn't have a hospital to which to take her. As soon as he was able to take her to Garfield he did. I had been feeding Miss Tew soup and broth for about a week. On the evening of the 26th Miss Tew became quite ill and Dr. Selders came to the apartment and said he would make arrangements to move her to a hospital. Dr. Selders told me to take the patient to the hospital, present her Group Health card at the desk, which was done, and Miss Tew was assigned to a room. The only question that arose that evening was whether Dr. Selders had courtesy staff privileges to operate in the hospital. I naturally assumed he had such privileges and would not have gone to the hospital if I did not think so. I wouldn't have advised my friend to go to the hospital to be operated on by Dr. Selders if I had known he didn't have such privileges. When it was ascertained from Dr. Dugan that Dr. Selders could not operate, I took the position that if Dr. Selders couldn't operate I would take Miss Tew out of the hospital. I told the people at the hospital that unless Dr. Selders was permitted to operate that Miss Tew would leave the hospital. When Dr. Dugan read a release at the foot of the bed I advised Miss Tew against signing it. I called a cab to take Miss Tew from Garfield, and it was waiting for us at the steps when Miss Tew fainted and slumped down between Mr. Adams and myself. I recall that Dr. Dugan mentioned several surgeons on the staff, saying how competent they were, and asked Miss Tew if she would not make a selection from that list, but I said "No" for Miss Tew and said if she couldn't have Dr. Selders she would leave the hospital.

Gov. Ex. 584 was received in evidence. Mr. Kelleher pointed out that there was written on the bottom of the release the following:

"Patient refused to sign release slip at 9:55 p. m."

And on the margin:

"Present, but not signing."

ANNA MARY DENNINGER, a witness for the United States.

Further redirect examination.

By Mr. Lewin:

I am the secretary to Jesse T. Mann. Dr. Mann's signature is on Gov. Ex. 583. Everything on the bottom is in Dr. Mann's handwriting.

Thereupon the Government offered in evidence Gov. Ex. 583, which was objected to by defendants because incompetent, irrelevant, and immaterial, and all that was shown was that Dr. Mann's signature appeared on it at the bottom of the exhibit. These objections were overruled and an exception was allowed.

Gov. Ex. 583 was received in evidence and read to the jury, as follows:

"Sibley Memorial Hospital,  
1150 North Capitol Street,  
Washington, D. C.

November 27, 1937.

DEAR DOCTOR:

Dr. Raymond Everett Selders has requested the privilege of treating the following in Sibley Memorial Hospital: Medicine, Minor and Major Surgical, Normal and Abnormal Obstetrics, Minor Gynecology, Major Gynecology.

As a member of the Advisory Committee on Surgery will you kindly indicate your approval or disapproval at the bottom of this letter and return it to the office of the President of the Hospital before Tuesday.

Very sincerely yours, Paul S. Putzki, M. D., Chairman.

Applicant's credentials on file in the office of the President.

Attention of the Committee is called to the fact that above applicant is one of the salaried physicians of the Home Owners' Loan Corporation Group Health Association and that information as to his qualifications and correspondence in connection with his application will be found on file in the President's office available to members of the various committees concerned for their information.

Not approved.

(Signed) J. T. Mann."

Government offered Gov. Ex. 295-A, a copy of a letter from Dr. Ireland to Dr. Cutter, dated March 27, 1937, which bears the notation "copy to Leland." Defendants objected on the grounds that it was immaterial, irrelevant and incompetent. Objection overruled and exception allowed.

(Gov. Ex. 295-A was admitted in evidence.)

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WILLIAM F. PENNIMAN, recalled as a witness for the United States.

Further direct examination.

By Mr. Kelleher:

Miss Elizabeth Tew was taken to Garfield Hospital. I talked to Mr. Eisenman, Superintendent of Garfield Hospital, in the latter part of November, 1938.

Q. What was the conversation you had with him?

Objections were interposed by the defendants that it was incompetent, irrelevant, and immaterial, that no conspiracy had been proven, that no conspiracy had been proven to which Garfield Hospital was a party, no authority had been shown in Dr. Eisenman to speak for the hospital, a corporation, admittedly controlled by a lay board of directors, and it was hearsay.

These objections were overruled, exception allowed the defendant, and the witness answered as follows:

A. It was quite lengthy; we went into a good deal of discussion about Group Health and he told me, the most important thing was that no hospital had the right to refuse admission to a patient in an emergency case, and that no hospital had the right to refuse that patient the right



to bring their own doctor, if it was an emergency, so long as such doctor was duly and properly licensed to practice medicine in the District of Columbia. Following that he told me that I could tell Dr. Brown, Medical Director, that in those cases which were emergency he could send such cases to Garfield and that Dr. Selders, who was regularly licensed to practice medicine in the District of Columbia, could attend them.

That permission was formally revoked subsequently.

**Cross-examination.**

**By Mr. Leahy:**

I don't remember the date when that emergency permission was revoked but I do remember that there was a letter to him in which it was stated that until the legality of Group Health was determined he would not have any privileges in the hospital. There was no other revocation of the emergency privileges than that contained in the letter, but I don't remember the date of the letter, and I assumed that Dr. Selders accepted the letter as a revocation of his right to bring into Garfield even an emergency case and he didn't go back.

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**CLARK PAUL HALSTEAD, a witness for the United States.**

**Direct examination.**

**By Mr. Kelleher:**

I am a doctor of medicine, specializing in minor surgery and general medicine, employed by Group Health, which I joined in August, 1938. I did my pre-medical work at George Washington University, transferred to Georgetown University, interned at Georgetown University Hospital, which work I finished on June 30, 1938. After joining Group Health I applied for courtesy privileges at Georgetown, Garfield, Providence, Emergency, George Washington, and Sibley Hospitals in August, 1938, with the exception of Garfield, where I applied in October, 1938. I applied for privileges in general medicine and minor surgery. Minor surgery excludes abdominal surgery or other major types of surgery and would include many things a gen-

eral practitioner with certain experience is entitled to do. Prior to December 20, 1938, no action was taken on these applications, I believe, except that Emergency Hospital notified me that I was not admitted, though I do not think that information came prior to December 20, 1938.

### Cross-examination.

By Mr. Leahy:

I finished my interne training on June 30, 1938, and I was approached by Dr. Selders of Group Health in August. I began my employment with Group Health on August 1. I personally made applications to the hospitals by letter in August. I didn't save copies of any of the letters making applications to the hospitals, and I don't know where those copies are.

Over the objection that the following documents are all incompetent, irrelevant, and immaterial, and were not admissible because no conspiracy had been proven against any of the parties involved; that the letters in the main were hearsay and were not shown to have been properly authorized, the Court admitted in evidence the following exhibits:

(Gov. Exs. 441-A, 194, 72, 73-A, 80, 81, 123, 124, 538, 539, 540, 543-A, 545, 558, 563, and 564 were received in evidence.)

The following exhibits were read to the jury:

Gov. Ex. 72 is a letter from Dr. Conklin to Dr. Holman Taylor, Secretary, State Medical Association of Texas, dated October 30, 1937:

"DEAR DR. TAYLOR:

I was very happy to hear from you and particularly glad to learn of your successful operations. It is indeed odd to have kidney stones without knowing it, but their removal, I am sure, will mean real satisfaction and the elimination of potential danger.

The Group Health Association is progressing. October 30, tonight, there is a banquet at the Mayflower Hotel which will be addressed by Richard Cabot of Harvard University. Most all of the hospital superintendents have been invited to attend, some of whom, I believe, will fail to be repre-

sented at the gathering. Our President received a letter of invitation, also a ticket. Needless to say this will represent another vacant chair. The staff is made up, according to information at hand, of 5 doctors, in one of whom you may have an interest, due to the fact that the American Medical Directory states that he is a member of the State Medical Society of Texas. Raymond Everett Selders appears to have been born in 1892; graduated at the University of Oklahoma, 1927, etc., etc. He, I believe, will assume the surgical responsibilities.

The clinic is located on the second floor of a building in the downtown section. The first floor is occupied by an electric light appliance concern. Reports show that they have received some financial assistance from the Federal Home Loan Bank Board. The setup, without the shadow of a doubt, seems to have the smiling approval of the various New Deal officials and the Secretary of Labor, on through.

I am hoping that the residual soreness as a result of your operation will have completely vanished by the middle of November so that we all may have the advantage of your presence and counsel at the American Medical Association meeting of State Secretaries.

With cordial regards, I am

Fraternally yours, C. B. Conklin, M. D., Secretary."

Gov. Ex. 73-A is a letter from Dr. Holman Taylor to Dr. C. B. Conklin, Secretary, Medical Society of the District of Columbia, dated Nov. 4, 1937.

"DEAR DR. CONKLIN:

I thank you for your favor of October 30, in reply to my letter of October 27, and having to do with the health insurance situation in the District of Columbia, just received.

I note with interest that a member of the Harris County (Texas) Medical Society is a member of the staff of the institution which is to be set up in Washington as a beginner in 'State Medicine'; that, in fact, he will take charge of the surgery in the new setup, Dr. Raymond Everett Selders.

Please let me know just as soon as the situation has developed in the District of Columbia to such an extent that charges of unethical conduct may be successfully lodged against Dr. Selders. I will see that the facts in the case are laid before his society. I don't believe the members of that organization will stand for anything of this sort, but even so, they are very fair down there, and rather discriminating.

They tend to their knitting like few other organizations of the sort with which I am acquainted. If we will give them the facts, they will do the buck; without the facts, they will hardly do anything about it.

I note your statement that the Group Health Association about which we have been writing, is about ready to go. Again I give it as my opinion that this organization has been inspired by some who are in high authority in our national government.

With personal regards,

Fraternally yours, Holman Taylor, Secretary."

Gov. Ex. 538 is a letter dated November 25, 1937, on the letterhead of the Columbia Hospital for Women, Washington, D. C., signed by P. M. Ashburn, M. D., Secretary of the Medical Board, addressed to the Secretary, Houston Medical Society, Houston, Texas.

"SIR:

I am directed by the Medical Board of this hospital to seek your aid in determining the qualifications of Dr. Raymond E. Selders, who practiced in Houston from 1928 to 1935, for doing major and gynecological surgery and operative obstetrics.

Dr. Selders is an employe of a medical cooperative or insurance organization recently formed by employes of the Home Owners Loan Corporation. This movement has received national attention and has excited much opposition in local medical circles. Dr. Selders, while apparently a generally well trained man, has not submitted evidence of the special training and experience usually demanded by this hospital of men seeking the privilege of doing operative work in gynecology and obstetrics.

Because of the special circumstances of the particular case and the Board's desire to act in a fair and judicial manner, any assistance you can give it will be greatly appreciated and will be held confidential."

Gov. Ex. 539 is a letter dated December 2, 1937, from Dr. Walter A. Coole to Dr. Ashburn:

"DEAR DOCTOR ASHBURN:

Your letter of November 25th regarding the qualifications of Dr. Raymond E. Selders has been referred to me for answer.

Dr. Selders is a member of this Society in good financial standing. His record here is clear and shows that he is academically and professionally well qualified. I have been given to understand that recently he completed his Masters Degree in Surgery at the University of Pennsylvania which should further qualify him.

We have been recently informed that he is an employee of the Home Owners Loan Corporation in a contract medical capacity and our Board of Censors are at present investigating the source of this information.

The Harris County Medical Society strongly condemns any such practice and if the allegations are found to be true, Dr. Selders will be subject to disciplinary action on the part of the Society.

Further than this, I have no information."

Gov. Ex. 81 is a letter dated January 14, 1938, on the letterhead of the Harris County Medical Society, signed by A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, addressed to the Secretary, Medical Association of D. C.

"DEAR DOCTOR:

The Harris County Medical Society, a component of the State Medical Association of Texas and the American Medical Association, is very anxious to know the medical status of the so-called Group Health Association, located there in Washington. We are especially anxious to know the ethical standing of the men who compose its staff as one of the staff members belongs to our local Society.

Any information you are in position to give us will be appreciated."

At the bottom, and on the back in pencil is a letter which has been identified as having been written by Dr. Conklin. It is identical with Gov. Ex. 80, which I will read.

Gov. Ex. 80 is a letter from Dr. Conklin to Dr. A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, dated January 19, 1938:

"In re: H. O. L. C. Group Health Association

DEAR DOCTOR TALLEY:

In reply to your letter of January 14, 1938, I would state that two members of this Society accepted employment;



one at \$2,400 to take all calls, another at \$4,800. The latter resigned from H. O. L. C. after his 'trial' before an appropriate committee of the Society for violation of provisions of the Society's Constitution lasted one night. The other continued; his hearing is now completed. It would seem that he will lose his membership. It must be noted that much praise was given him by the full-time governmental attorneys who represented him.

I am enclosing certain available mimeographed information. Should you wish any further data please communicate with me."

Gov. Ex. 540 is a letter dated January 31, 1938, on the letterhead of the Harris County Medical Society, from A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, to Dr. Raymond E. Selders, 2445 Fifteenth St., Washington, D. C.

"DEAR DOCTOR:

At a business meeting of the Harris County Medical Society, January 26, 1938, the Board of Censors reported that it had received a communication from the Secretary of the District of Columbia Society through Dr. Holman Taylor, Secretary of the State Medical Association of Texas at Fort Worth, that a member of the Harris County Medical Society had accepted a position on the Surgical Staff of the so-called Group Health Association made up of Federal employees of the HOLC, located in Washington, D. C. (No name was mentioned.) The Board of Censors stated from their interpretation of the Code of Ethics of the American Medical Association, under which we practice, that it was unethical for one of our members to accept a position of this kind. This interpretation was upheld by a unanimous vote of the Society.

Hoping you will continue to be with us and that we may hear from you immediately, I am

Sincerely,"

Gov. Ex. 541 is a letter dated February 10, 1938, from Dr. Raymond E. Selders to Dr. A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, Houston, Texas.

"It will be greatly appreciated if I may have from you a frank statement of the grounds on which the action which

your letter discloses were taken. It seems to me that I am entitled, under the circumstances, to a full expression of the views of the membership which brought forth what you have described as a unanimous vote of the Society."

Gov. Ex. 556 is an excerpt from the minutes of the Harris County Medical Society dated January 26, 1938:

"Dr. A. T. Talley, chairman of the Board of Censors, reported upon an appeal from a decree of the Adjudication Committee, the approval of two new members for membership, and the matter of one of our members affiliating with a contract organization in Washington, D. C. Motion made, seconded and carried that this report be accepted. Report attached."

Gov. Ex. 558 is an excerpt from the regular business meeting of the Harris County Medical Society dated March 30, 1938:

"Dr. A. T. Talley, reporting for the Board of Censors, preferred formal charges of unethical practice against Dr. Raymond E. Selders. These charges are attached hereto and made a part of these minutes."

Gov. Ex. 545 is a letter dated April 15, 1938, from Dr. Coole to Dr. Selders.

"DEAR DR. SELDERS:

This is to inform you that formal charges, copy of which were sent to you, were read by the Board of Censors at the last regular business meeting of the Harris County Medical Society, March 30th, 1938.

These charges shall be submitted to the Society in executive session at the next regular business meeting April 27th, 1938, for action by the Society.

In accordance with the Bylaws and Constitution of the Society, you may conduct your own defense, or select some other member to conduct it for you. If you should be absent, or fail to appoint some member, the president shall appoint a member to defend you.

I am in receipt of your answer to these charges and shall turn them over to the member appointed to defend you should you be absent.

Sincerely yours, Walter A. Coole, M. D., Secretary."

Gov. Ex. 543-A is a letter dated March 9, 1938, signed by three members of the Board of Censors:

"Mr. President and Members, Harris County Medical Society,

The Board of Censors of your Society does hereby formally prefer charges of unethical practice against one of your members, Dr. Raymond E. Selders.

This incident charges him with accepting a position on the surgical staff of a group health association, made up of Federal employees of the Home Owners Loan Corporation, located in Washington, D. C. This type of practice is unethical as judged by Article VI, Section 3 of the American Medical Association's Code of Ethics, in that:

(1) The compensation is inadequate to assure good medical service.

(2) It interferes with reasonable competition among the doctors in the city of Washington, D. C.

(3) It interferes with the free choice of a physician by the patient.

(4) It is contrary to sound public policy.

Respectfully submitted, A. T. Talley, M. D., Chairman, John H. Foster, M. D., C. M. Warner, M. D."

Gov. Ex. 560 is the minutes of the regular business meeting of the Harris County Medical Society dated April 27, 1938.

"The President announced an executive session. Assembly Hall was cleared at 8:30 p. m.

Dr. J. C. Alexander was appointed by the President to act as defender to formal charges filed against Doctor Raymond E. Selders.

The formal charges as set forth in the minutes of the Business Meeting of March 30th, were read by the Secretary.

The President asked the Defense, "What is your answer—Guilty or Not Guilty?"

Dr. J. C. Alexander: Not Guilty. Is Dr. Selders a member in good standing of this Society?

Secretary: Dr. Selders is on the rolls of the Society as a suspended member, his dues having expired April 1st.

Dr. J. C. Alexander: I make the motion that these charges be deferred inasmuch as Dr. Selders is not a member in good standing.

Dr. William E. Ramsay: We have no other option, other than to proceed with this trial.

Dr. A. T. Talley: There is no question about the status of Dr. Selders. As a suspended member on the rolls of the Society, he is under the discipline of the Society; however, I wish to offer this resolution:

"Dr. Raymond E. Selders, a member of our Society, was indicted by the Board of Censors for unethical practice upon a complaint from the District of Columbia Society, through Dr. Holman Taylor, Secretary of the State Medical Association of Texas, that he had accepted a position on the surgical staff to do contract practice for a Group Health Association, made up of Federal employees of the HOLC in Washington, D. C.

"Since reading the indictment to the Society at the March Business Meeting, the Board of Censors has had an opportunity to study the By-Laws of the American Medical Association in reference to this matter and we find in Chapter IX, Section 1, pertaining to duties of standing committees and councils, words which according to our interpretation, mean that in any controversy between a constituent association and a member or members of another constituent association, the Judicial Council has original jurisdiction in adjudicating the controversy. Therefore, according to this By-Law, the controversy between the District of Columbia and Dr. Selders, who is a member of the State Medical Association of Texas, both constituent associations, should be referred by this Society directly to the Judicial Council of the American Medical Association for adjudication.

"The Board of Censors moves that this be done."

Dr. J. C. Alexander: Will the Chairman of the Board of Censors quote this authority?"

"The President called for a vote upon the motion of the Board of Censors. The motion carried by a vote of 41 in favor of the motion and 4 against it."

Mr. Allen: And without reading the minutes, if it is agreeable to counsel, may it be understood that it was referred to the American Medical Association and was returned by the American Medical Association to the Harris County Medical Society?



Mr. Leahy: Yes.

Gov. Ex. 563 is the Minutes of the Special Business Meeting of the Harris County Medical Society on November 23, 1938:

"Meeting called to order by Dr. John T. Moore, President. Dr. A. T. Talley presented the following resolution of the Board of Censors:

"The Board of Censors, Drs. A. T. Talley, John H. Foster, and Clyde M. Warner, met with your President, Dr. John T. Moore, the Secretary, Dr. Walter A. Coole, the District Counselor, Dr. Judson L. Taylor, and the legal representative of Dr. Raymond E. Selders, Dr. J. C. Alexander, November 21, 1938.

The meeting was called to order and a very free and frank discussion was held regarding the Dr. Raymond E. Selders matter, which has been pending in our Society for some time.

The conclusion reached by the Board of Censors was agreed to by all those present, that due to the various legal questions involved in the case, the Board of Censors recommends to the Society:

That the charges of unethical practice against Raymond E. Selders, now lying on the table, be brought before the Society and dismissed without prejudice."

Motion was made by Dr. John Zell Gaston, seconded by Dr. William E. Priester, and duly carried, that the resolution of the Board of Censors be adopted.

Dr. Talley presented the following resolution of the Board of Censors:

"That the check of \$24 tendered the Society by Dr. Raymond E. Selders to pay his 1938 dues be accepted."

Motion was made by Dr. B. T. Van Zant, seconded by Dr. Dawes, and carried, that the resolution of the Board of Censors be adopted.

Letter of transfer from the Harris County Medical Society was read by the Secretary from Dr. Raymond E. Selders.

Motion by Dr. A. T. Talley, seconded by Dr. Priester, that the letter of transfer be voted upon at the next regular business meeting, November 30, 1938. Motion carried."

Gov. Ex. 564 is the minutes of the regular business meeting of the Harris County Medical Society on November 30, 1938.



"Unfinished Business."

"Voting on the application of Dr. Raymond E. Selders for transfer. Vote by ballot 52 yes, 42 no that Dr. Selders be granted a transfer."

Gov. Ex. 585 which purports to be a letter from Dr. Thomas E. Neill, President, District Medical Society, to the Superintendent of Homeopathic Hospital, dated April 23, 1938, was offered in evidence. The Court's attention was called to the fact that Dr. Neill's signature is already in evidence and the Court was asked to exercise its discretion and compare the signatures. The letter was produced in response to a subpoena duces tecum by Homeopathic Hospital. Defendants objected on the grounds that it was incompetent, irrelevant and immaterial and no conspiracy had been shown. Objection overruled and exception noted.

Gov. Ex. 585 was received in evidence and read to the jury, as follows:

"DEAR MRS. TREASURE:

The Executive Committee of the Medical Society of the District of Columbia believes that a joint meeting of the Presidents of the Boards of Directors of the several hospitals, together with their Chairman of the Medical Staffs, and Superintendents, and a few members of the Medical Society, for a round table discussion of our common problems, may result in a fuller and better understanding, especially in preserving the best professional care for our community.

You are, therefore, cordially invited to be present on Tuesday, April 26, 1938, at 8 P. M., in the Library of the Medical Society Building, 1718 M Street, N. W. This meeting is entirely for our mutual understanding and not for publication:

Very sincerely yours, Thos. E. Neill, M.D., President."

GRACE BRENNEN, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am secretary to Dr. Jerome Crowley, and was such in July, 1938. I know his handwriting. The answers to ques-

tions 8 and 11 on Gov. Ex. 307 are in the handwriting of Dr. Crowley, but the rest of the handwriting is not that of Dr. Crowley.

Thereupon the Government offered in evidence Gov. Ex. 307, requesting a comparison with the handwriting other than Dr. Crowley's appearing on Gov. Ex. 307, with the handwriting of the defendant Warfield on Gov. Ex. 308. This offer was objected to on the grounds that it was incompetent, irrelevant, and immaterial, and that no conspiracy had been proven. These objections were overruled and an exception noted.

(Gov. Ex. 307 was received in evidence.)

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HARRIET AUSTIN, a witness for the United States.

Direct Examination.

By Mr. Lewin:

I live in Chevy Chase, Maryland. In September, 1938, I lived on 44th Street, in Foxhall Village. I was not entitled to privileges in Group Health until after an accident. The accident spoiled my memory. I guess the accident happened in September of 1938 on Pennsylvania Avenue. I have a daughter named Edwina Avery who was a member of Group Health. I was dependent on my daughter at the time of the accident. After the accident I was taken to Emergency Hospital, put to bed, and examined. I don't know very much about it. I didn't receive any treatment. I sent word to my daughter, Mrs. Avery, who came right down with her husband. Shortly after they came I was taken in an ambulance from the hospital.

Cross-examination.

By Mr. Leahy:

I can't give the date of the accident. My memory was destroyed at that time. I don't remember the name of anybody at Emergency Hospital. One person examined me but I don't know very much about it anyway, and I didn't know much about what happened.

EDWINA AVERY, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am Mrs. Austin's daughter. I was employed in the Department of Agriculture in 1938, and was a member of Group Health. Under my membership my mother was entitled to the benefits of the organization. On September 7, 1938, I received a telephone call about 6:30 P. M. and as a result went down to the Emergency Hospital and found mother in the intake department.

I talked with the interne at Emergency as soon as I found the one who had examined mother and found that he had examined her, and that he had stated that there were no broken bones he could find; that there was no concussion, but that she was suffering badly from bruises and cuts. I immediately asked to have my own doctor brought in. This man said that there was another interne who wished to see her, a Dr. Harris, and I said, "How soon?" Naturally I was very much upset. The doctor said it would probably be an hour, that the doctor was already in the hospital, but that he had to eat his dinner. I wasn't anxious to wait an hour to have my mother further examined, and continued to insist on having my own doctor come in. He said I could phone him. I immediately went to the phone, to which I was directed, and called Dr. Selders. I asked Dr. Selders to come immediately, and found out that he could not, and that I should go to the hospital authorities to make arrangements for his coming. I immediately went to the superintendent's office, was told that it was after hours, and that the general superintendent was not there. I was referred to the night superintendent, a doctor named McKeever. I went to see Dr. McKeever and asked to have my doctor brought in. I explained that the case was an emergency case, and that my mother was at that time in the intake department, having no attention whatsoever, except that one interne had looked her over.

Dr. McKeever wanted to know who my doctor was. I said, "Dr. Selders." He said he didn't know him. I explained that he was Dr. Raymond E. Selders, the Medical Director of Group Health, of which I was a member.

A. • • • He looked in a file over in the corner and came back and said that Dr. Selder's name was not in their

list. I said, "Just what does that mean?" He said that Dr. Selders would not be admitted to their hospital. I said, "Well, my mother——" Just then my husband came in and heard that remark and said something. I spoke up and said, "I have explained this to Dr. McKeever. This is an emergency and my mother is an emergency case, and it is my understanding in emergencies we can have our own doctor in."

Dr. McKeever said he was sorry, it didn't make any difference whether it was emergency or not. Dr. Selders couldn't come in. I said, "But I thought the whole point in this controversy was that we were to have the free choice of physicians"; that he was my surgeon and I wanted Dr. Selders. He said, "I am sorry." My husband said, "Perhaps he is working under orders." I said, "Is that so?" He said, "Yes." I said, "Perhaps it would be good for me to go to the superintendent." He said, "No, it wouldn't do any good to see him; the orders would be the same." I said, "I want my surgeon to look over my mother." The doctor said he could do so in the intake department but as far as giving any orders or doing any work, treating her, it would not be permitted. I said the best thing I could do would be to find out from Dr. Selders what he would recommend.

Q. Before you leave that conversation, did Dr. McKeever suggest any other doctor?

A. Yes, he did. He went over to the corner when I said this about the free choice of physicians. He said, "We have a whole list of doctors here. You can have your free choice." I said, "I suppose I will go over and close my eyes and go down the list." He said, "You can move your mother to any hospital in the city if you wish."

I said, "Could we be assured we would receive any different treatment in any other hospital?" He said, "No". I called Dr. Selders again at that time.

After talking with Dr. Selders I went back to see my mother and found her in a very high state of—in fact, near nervous collapse, because of the treatment she had been subjected to. I went back and talked again to the interne and found that this Dr. Harris had examined her in the meantime, while I was talking to the superintendent, and I talked to both these doctors and they both assured me there were no broken bones and, so far as they could see, no concussion,

although they could make no definite statement on that, but because of conditions there I made the decision to move my mother that night. I moved her as soon as I could get an ambulance to take her home when she was examined by her own surgeon. She got home between 9 and 10 o'clock.

#### Cross-examination.

By Mr. Leahy:

I am still employed by the Agricultural Department. I joined G.H.A in February of 1938. At present I am one of the Board of Directors of G.H.A. I have been on the board for a little over a year. The accident occurred early in September, late in the evening. The accident happened about 5:19 and they called me at 6:35 p. m., according to my maid. When the girl at the hospital reached me I was told mother had been brought in at 5:30 p. m., and the girl explained that they had had difficulty or something. Immediately on receipt of the call I went down to the hospital and found that an interne had examined mother and said he wanted Dr. Harris to look over mother. While I was talking to Dr. McKeever for about 20 minutes, Dr. Harris examined mother, and I was informed that there were no broken bones or anything of that kind. I knew Dr. Selders as one would know their physician. On numerous occasions I have discussed matters with Dr. Selders. I was informed when I talked with Dr. Selders over the phone that I had the right to have my own doctor in an emergency. I didn't look at the list of doctors on the hospital staff which Dr. McKeever called to my attention. I talked to Dr. Harris when I returned to the intake department and after being informed that there were no broken bones but serious cuts and bruises I obtained an ambulance and took mother home. Dr. Selders didn't see mother that evening but Dr. Halstead came.

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LOUIS F. THOMPSON, a witness for the United States.

#### Direct examination.

By Mr. Kelleher:

In March 1938 I was employed with the Home Owners Loan Corporation and I worked there with Mr. Berry, being



temporarily assigned to assist in setting up the records of Group Health, and worked with Mr. Berry in doing that. I signed Mr. R. T. Berry's signature to Gov. Exs. 463 to 468, inclusive, and placed my initials, "L. F. T." on each letter. As there were a pile of those letters printed Mr. Berry signed part and asked me to sign the others.

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KENNETH D. ARMSTRONG, a witness for the United States.

Direct examination.

By Mr. Lewin:

In May of 1929 I was notary public in the District of Columbia and took the affidavit of the applicant appearing on Gov. Ex. 586. The applicant appeared before me and signed the exhibit and was Thomas E. Mattingly.

Cross-examination.

By Mr. Leahy:

I know the applicant personally and have known him since 1929, but I don't have any independent recollection as to whether the applicant signed this particular signature.

Thereupon the Government offered in evidence Gov. Ex. 587. To this the defendants objected on the grounds that no conspiracy had been proven, showing Dr. Mattingly to be a party thereto, that the letter was incompetent, irrelevant, and immaterial, and hearsay as to the other defendants, and the letter is a statement of a citizen to the Grand Jury and not admissible as evidence in this case. These objections were overruled and exception was allowed.

(Gov. Ex. 587 was received in evidence.)

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DR. SAMUEL H. ROGERS, a witness for the United States.

Direct examination.

By Mr. Lewin:

I am president of the Board of Directors of Casualty Hospital and was such in 1938. Gov. Ex. 588 was produced

from the files of Casualty Hospital, as was Gov. Ex. 589. Gov. Ex. 590 is on a Casualty letterhead and is a report of the Credentials Committee dated June 13, 1938 signed by the committee. I know the signatures of the signers, Dr. Young and Dr. Taylor; but I am not familiar with the signature of Dr. Magruder MacDonald but believe that is his signature. Gov. Ex. 591 is signed by Dr. J. Burr Piggott, acting chief of staff on June 16, 1938. It was customary in the ordinary course for the Medical Staff of Casualty Hospital to have meetings and to keep minutes thereof. Dr. J. Rogers Young was secretary of that staff in 1938. I cannot identify Dr. Young's signature to Gov. Ex. 592, 593, and 594, but we have every reason to believe that those exhibits are minutes produced from the files of Casualty Hospital and kept in the ordinary course by the Medical Staff. I identify what purports to be a roster of the Medical Staff and the committees of Casualty Hospital in 1938, but I am not familiar enough with the list to know everyone on the committees, but I would say it was a correct list. The chief of staff of Casualty Hospital in the middle of the year 1938 was Dr. Piggott. Before Dr. Piggott became acting chief, Dr. J. T. Lewis was chief of staff. Dr. J. T. Lewis left Casualty Hospital in the middle of 1937. Dr. Lewis was chief of staff until the middle of 1937, left the hospital and went to Panama, never returning to the States as he died in Panama. I don't know who succeeded Dr. Lewis on the Hospital Committee of the District Medical Society. I was probably informed at some time by Dr. Young that he was a member of the Hospital Committee of the District Medical Society, but I don't know when, and I don't know whether or not Dr. Young succeeded Dr. Lewis on that committee.

#### Cross-examination.

By Mr. Leahy:

Gov. Exs. 592, 593, and 594 are the minutes of the Medical Staff. On one or two occasions I attended such meetings for a short while. I never saw anyone taking down any of the meetings stenographically. I have never read the minutes and all I know is that what appears in the papers is that they are signed by J. Rogers Young. The Credentials Committee is the one that passes on the membership of the staff. The Executive Committee probably

acts for the staff during the interim in which they have no meeting. The Credentials Committee considers applications for membership to the staff, reports to the Medical Staff, and that staff in turn reports to the lay Board of Directors of the hospital, and that lay Board of Directors finally appoints the staff. I am not familiar enough with Dr. MacDonald's signature to identify it. The Interne Committee has charge of internes and the Record Committee sees that the records are kept properly.

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DR. FRANCIS X. RICHARDSON, recalled as a witness for the United States.

Further direct examination.

By Mr. Lewin:

I resigned from my position with Group Health on July 15, 1938, and turned in a written resignation on that date. The witness was then asked his immediate reason for resigning from Group Health. The defendants objected to this on the ground that it was incompetent, irrelevant, and immaterial, and hearsay. These objections were overruled and exception was allowed. The witness answered: I resigned from Group Health because I was afraid I might lose my hospital privileges.

Cross-examination.

By Mr. Leahy:

I went to work for Group Health in the year 1937 and had privileges in Sibley, Providence, and Garfield Hospitals, and I had them on July 15, 1938.

The Government then made the following offers: Gov. Exs. 595 through 604, 588, 589 and 591 were offered in evidence against all defendants. Gov. Exs. 590, 592, 593 and 594 were offered in evidence against the defendant Warfield. Gov. Exs. 466, 467, 468, 465, 463, 464, 462 and 304 were offered in evidence. Defendants objected on the grounds that they were incompetent, immaterial, and irrelevant, that no conspiracy had been shown and they are hearsay. Special objection to Gov. Exs. 462 to 468, inclusive, on the ground that they are self-serving statements by an

employee of an interested party, not a defendant. Special objection to Gov. Ex. 591 that there is no proof that Dr. Selders ever received it. Gov. Ex. 591 is from the files of Group Health. Special objection to Gov. Exs. 592, 593 and 594 on the grounds that they were not properly proven. Objections overruled and exceptions allowed.

(Gov. Exs. 595 through 604, 588, 589, 591, 590, 592, 593, 594, 466, 467, 468, 465, 463, 464 and 462 were received in evidence.)

Gov. Ex. 605, a letter sent by Mr. Kirkpatrick, was offered in evidence. Defendants objected on the ground that it was incompetent, immaterial, irrelevant and hearsay. Objection overruled and exception allowed.

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(Gov. Ex. 605 was received in evidence.)

Mr. Kelleher: I would like to make this offer of proceedings and also to correct the record. I think the simplest way to do it is to read a statement into the record. I have made a copy for the other side and have given it to them, and will give a copy to the court reporter, but I would like to make the statement in open court if I may.

The Court: Very well.

Mr. Kelleher: With reference to Government Exhibit 3, which is the proceedings of the House of Delegates of the American Medical Association for 1938, the Government has offered, and it is our understanding that the court has received, so much of the report of the Secretary as is marked in red pencil on pages 5 and 6, together with a portion of the Report of the Reference Committee on Reports of Board of Trustees and Secretary, marked in red pencil and appearing on page 58, and the official action with respect to this report, appearing on page 60 and marked in red pencil.

It is also our understanding that the court has received in evidence the portion of the Report of the Board of Trustees, marked in red pencil on pages 7, 8, 29, 30 and 31 together with the portion of the Report of the Reference Committee on the Reports of the Board of Trustees and Secretary appearing on pages 58, 59, and 60, marked with red pencil, and the action of the House of Delegates on the Report of the Reference Committee, appearing on page 60 and marked with red pencil. Since the report of the Board

of Trustees on the Bureau of Medical Economics was referred to the Reference Committee on Legislation and Public Relations, the portions of the report of that committee appearing on page 76 and marked in red pencil have been offered and received, together with the action of the House of Delegates on the report, appearing on page 77 and marked in red pencil.

Mr. Leahy: Can you identify that so that we can check it?

Mr. Kelleher: June 13 to 17, 1938. It is Exhibit 3.

Now I come to Exhibit 5, which is the report of the proceedings of the House of Delegates in 1931.

The portion of the Report of the Board of Trustees, marked in red pencil and appearing on page 19 of Exhibit 5, has been offered and received in evidence, together with the portion of the Report of the Reference Committee on Reports of the Board of Trustees and Secretaries, appearing on page 35 and marked with red pencil, and the action of the House of Delegates approving the Report of the Reference Committee, appearing on page 35 and marked with red pencil.

It is also our understanding that the portion of the Report of the Judicial Council, appearing on page 24 and marked with red pencil, has been offered and received in evidence, together with the portion of the Report of the Reference Committee on Rules and Order of Business, appearing on page 40 and marked in red pencil, and the action of the House of Delegates on the latter report, appearing on page 40 and marked in red pencil.

Exhibit 6 is the report of the proceedings of the House of Delegates for 1932. It is our understanding that the portion of the Report of the Board of Trustees appearing on pages 15 and 16 and marked with red pencil, together with the portion of the Report of the Reference Committee on Reports of Board of Trustees and Secretary, appearing on page 46 and marked with red pencil, and the action on the latter report by the House of Delegates, appearing on page 48 and marked in red pencil, has been offered and received in evidence.

We now offer the portion of the report of the Reference Committee on Medical Education appearing on page 40 of Exhibit 6.

The Court: First, Mr. Kelleher, as to the statement which you have read as to your understanding of what action was



taken on this evidence that was offered, that was back in the early part of the trial, as I recall, and I cannot be certain about it. I suggest that counsel take this statement before our next session and check the record up. In the absence of any indications from you of any disagreement on counsel's statement I will assume that it is correct.

Now you may proceed.

Mr. Kelleher: We now offer, which has not been offered before, from Exhibit 6 the portion of the report of the Reference Committee on Medical Education, appearing on page 40, marked in red pencil, and the action of the House of Delegates on the report of that committee, appearing on page 41 and marked in red pencil.

I am sorry I have confused things. That portion, that is, the report of the Reference Committee on Medical Education and the action of the House of Delegates has been received in evidence, according to our understanding.

Government's Exhibit No. 102, the report of the proceedings of the House of Delegates for 1933—from that report, in addition to what has already been offered and received, we now offer in evidence the resolution of Mundt, appearing at page 50 of Exhibit 102, together with the Report of the Reference Committee on the Mundt Resolution, appearing at page 56, and the action of the House of Delegates on the report of the Reference Committee appearing on page 57, all of which are now marked with red pencil.

The Court: Do you want to read those?

Mr. Kelleher: No, your Honor. We just want them in the record.

Government Exhibit 8 is the report of the proceedings of the House of Delegates for 1934. We believe that the transcript incorrectly shows that the Government offered the portions of the Report of the Special Committee appearing on pages 53 and 54. The Government offered only the portion of the report of that committee appearing on page 55 and now marked in red pencil, together with the action of the House of Delegates dealing with the report, appearing on page 55 and marked with red pencil. The record correctly shows, on page 855, that this portion of the report and the action of the House of Delegates thereon were admitted in evidence.

I would like to make an offer of the proceedings of the House of Delegates for 1935, 1936 and 1937, and I will just

proceed with my statement subject to check later by counsel. I am going to read a statement of what we offer.

Government Exhibit 606 for identification is the record of the proceedings of the House of Delegates for 1935, and I now hand it to counsel for the defendants.

The Government offers in evidence the following portions of Exhibit 606: the portion of the report of the Judicial Council appearing on page 30 and marked with red pencil; so much of the Report of the Reference Committee on Reports of Officers, to which the Report of the Judicial Council was referred, as is marked in red pencil on pages 40 and 41 of the Proceedings; the action of the House of Delegates upon that portion of the Report of the Reference Committee, marked as aforesaid, appearing on page 41 and marked in red pencil; the portion of the Report of the Council on Medical Education and Hospitals, appearing on page 31 and marked in red pencil; the portion of the Report of the Reference Committee on Medical Education appearing on page 37 and marked in red pencil; the action of the House of Delegates upon the report of said Reference Committee, appearing on page 38 and marked in red pencil; that portion of the Report of the Reference Committee on Medical Economics appearing on page 46 and marked in red pencil; the action of the House of Delegates upon the aforesaid portion of the report of said Reference Committee, appearing on page 47 and marked in red pencil; that portion of the Special Report of the Bureau of Medical Economics appearing on pages 56, 59, and 60, and marked in red pencil; that portion of the Report of the Reference Committee on Medical Economics appearing on page 63 and marked in red pencil, and the action of the House of Delegates on the said portion of the report of said committee, appearing on page 64 and marked in red pencil.

The Government now offers in evidence the proceedings of the House of Delegates for 1936 which have been identified as Government Exhibit 607. I now hand that to counsel for the defendants.

The Government offers in evidence the following portions of that exhibit:

Those portions of the Report of the Board of Trustees appearing on pages 7, 20, and 23, and marked in red pencil; that portion of the Report of Reference Committee on Legislation and Public Relations, to which the portion of the

Report of the Board of Trustees appearing on page 23 was referred, appearing on page 51 and marked in red pencil; those portions of the Report of the Judicial Council appearing on pages 36 and 37 and marked in red pencil; those portions of the Report of Reference Committee on Reports of Officers, to which Reference Committee the Report of the Judicial Council was referred, appearing on pages 47 and marked in red pencil, and the action of the House of Delegates on said portions of the Report of said Reference Committee, appearing on page 48 and marked in red pencil; that portion of the report of the Council on Medical Education and Hospitals, appearing on page 38 and marked in red pencil; that portion of the Report of Reference Committee on Medical Education appearing on page 45 and marked in red pencil and the action of the House of Delegates on said report, appearing on pages 45 and 46 and marked in red pencil; that portion of the Proceedings entitled "Membership in County and State Associations for Members of Staffs of Hospitals," appearing on page 60 and marked in red pencil.

One more offer, your Honor. The Government now offers in evidence Exhibit 608, which is the proceedings of the House of Delegates for the year 1937. The Government offers the following portions of said proceedings:

The portion of the Report of the Board of Trustees appearing on pages 22, 23, 24, and 25, and marked in red pencil; that portion of the Report of Reference Committee on Legislation and Public Relations, appearing on page 68 and marked in red pencil; the action of the House of Delegates on that portion of the report of said Reference Committee appearing on page 68 and marked in red pencil; that portion of the report of the Judicial Council appearing on pages 39 and 40 and marked in red pencil; the Report of Reference Committee on Amendments to the Constitution and By-Laws, appearing on page 74 and marked in red pencil; that portion of the Report of the Council on Medical Education and Hospitals, appearing on page 41 and marked in red pencil; that portion of the Proceedings entitled "Proposed Amendments to the Principles of Medical Ethics," appearing on page 53 and marked in red pencil; that portion of the Report of Reference Committee on Amendments to Constitution and By-Laws, appearing on page 64 and marked in red pencil, and the action of the House of

Delegates on said portion of the report of said Reference Committee, appearing on page 65 and marked in red pencil.

The Court: I will just leave those matters in the hands of counsel for the defendants.

Thereupon the Government read to the jury Gov. Ex. 587, theretofore received in evidence over the objection and exception of the defendants, with the instruction by the Court that the letter was admissible only against the writer, as follows:

Mr. Lewin: This is a letter from the defendant Thomas E. Mattingly addressed to William R. Beall, Foreman, Special Grand Jury, dated November 13, 1938 (reading):

"GENTLEMEN OF THE GRAND JURY:

I hope that you will not think that this second communication implies any fear on my part that my first letter did not or will not get just consideration and appropriate action. Rather it is written to provide you gentlemen with specific data, whereby I hope to persuade you, (even should the Public Prosecutor object) that you, as a fact finding body, could not in justice, honesty or fair play ignore my plea as a reputable physician, a native son and a life long resident of the District of Columbia, for a hearing. I purposely add the comment, 'even should the Public Prosecutor object,' because I am fearfully of the belief that he will use every device at his command to keep you from learning the whole truth, undistorted by political prejudice and intellectual dishonesty. It is my personal opinion that if the Public Prosecutor had knowledge or even a well founded suspicion, that the testimony of a witness subpoenaed before you, might weaken or break his case, he would not be above the legalistic trickery of attempting to persuade you, 'that the status of the witness had already been investigated and such testimony as they might be able to give, is both irrelevant and inconsequential.'

Because I have an abiding faith in your civic honesty, your democratic concept of justice and your staunch, incorruptible courage, I promise if allowed to appear before you and under your sovereign protection, to acquaint you with what is in the hearts and minds of this community of physicians which has motivated us to do as we have done. I am sure you will agree, that before you can with honesty and conscience indict us, you must make every effort to ascertain the true reasons behind this concerted but spontaneous



action of a preponderant majority of the physicians of Washington. Only when and if you have weighed and considered those motives, can you return a true and uncorruptible verdict. Because I trust you, have faith in you, I promise if given an opportunity to appear before you to truthful answers (sic) without any evasion or reservation whatsoever.

That you might know beyond any reasonable doubt and despite any objections on the part of the Public Prosecutor that my testimony is both relevant and consequential, I frankly admit the following acts of professional leadership, successfully accomplished.

1. I personally raised the question and forced the issue of compelling wavering or undecided hospitals to deny courtesy privileges to staff members of G. H. A. I likewise successfully argued the point in an Executive Session of the Medical Society that we had ample precedent to discipline any member of our Society found guilty of secretly aiding G. H. A. in obtaining its objectives by subterfuge. The threat of this action alone enjoined the clandestine cooperation of several members suspected of such cooperation, though it must be noted that these members were never openly named because such suspicion we had, was hearsay evidence only, and as such was not admissible.

2. I successfully used my position as a member of the Medical Council to prevent Dr. Raymond Selders from receiving courtesy privileges at Sibley Hospital.

3. I was the author, sponsor and lone defender of the defeated substitute motion which would have punished Dr. Scandiffio with suspension, instead of expulsion from the Medical Society.

Obediently, Thomas E. Mattingly, M. D."

May it please the court, with the reservation of the right to introduce at the next session such items of evidence as we may have overlooked, the Government at this time rests.

The Court: Have there not been some letters and papers that have gone in recently that ought to be read?

Mr. Lewin: No; I do not think so. Lots of them were cumulative things that we did not expect to read.

The Court: I thought if you did want to read them I would like to take the time to do it now.



Mr. Lewin: No, your Honor. We do not plan to read them unless counsel for the defendants want them read.

Photostatic copies of certain portions of the minutes of the District Medical Society and its Executive Committee were marked Gov. Ex. 609.

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FRED O. COE, recalled as a witness for the United States.

Further direct examination.

By Mr. Kelleher:

I was secretary of the executive staff of Georgetown University Hospital during 1938. My signature is on Gov. Ex. 610.

Gov. Ex. 610 was offered in evidence. The defendants objected on the ground that it was incompetent, irrelevant, and immaterial, and hearsay, and that it was not admissible because no conspiracy had been proven involving the Georgetown University Hospital. These objections were overruled, exception allowed.

(Gov. Ex. 610 was received in evidence.)

The Government offered in evidence a letter dated December 20, 1937, from Dr. Leland to Saville, marked Gov. Ex. 261. This letter was objected to on the ground it was incompetent, irrelevant, and immaterial. The Court overruled these objections and allowed the defendants an exception.

(Gov. Ex. 261 was received in evidence.)

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HELEN E. SWANSON, a witness for the United States.

Direct examination.

By Mr. Kelleher:

I am employed as secretary to the Medical Director, Dr. Bloedorn, at George Washington University Hospital. I prepared a roster of the committees and of the staffs of the hospital. Gov. Ex. 612 is the roster of the Committee

on Hospital Privileges, 1937 and 1938, of the hospital. Gov. Ex. 613 is the schedule of the staff services for 1937, for the hospital. Gov. Ex. 613-A shows the schedule of staff services for 1938, and shows the courtesy staff on July 1, 1937 through June 30, 1938. The pencilled words "yes" or "no" opposite each of the typewritten names is a tabulation showing the members of the Medical Society and members of the American Medical Association who were members of the staff of the hospital. The notation "50 not members of D. C. Medical Society" means that at that time 50 of the members of the staff were not members of the District Medical Society. The tabulation in pencil, as shown in the two pencil columns on the left-hand side of the page shows which of the doctors on the staff of George Washington University were members of the Medical Society during 1937 and 1938.

#### Cross-examination.

By Mr. Leahy:

I typed Gov. Ex. 612 from information furnished me by Dr. Bloodorn, the Medical Director of the staff. The Committee on Hospital Privileges constitutes the board which determines whether or not a doctor has hospital privileges, that is the right to practice his profession in the hospital. If a doctor doesn't have privileges he doesn't have the right to practice in the hospital. Gov. Ex. 614 shows the attending physicians. The tabulation of membership in the Medical Society and the American Medical Association appearing in pencil on Gov. Ex. 614 was prepared in the latter part of January or first part of February, 1941. There is nothing to show how long any one of the doctors had been a member of the District Medical Society. The information as to membership in the American Medical Association was obtained from its Directory, and the information on membership of the Medical Society directly from the Society. Gov. Ex. 613 shows the staff service of the hospital and the teaching staff of the medical school, meaning the general staff and not the courtesy staff.

\* The Government offered in evidence Gov. Exs. 612, 613, 613-A, and 614. These were objected to on the ground of being incompetent, irrelevant, and immaterial, and hearsay, as the hospital had not been proven to be a party to any conspiracy. The objections were overruled, exception was allowed.

(Gov. Exs. 612, 613, 613-A, and 614 were received in evidence.)

The Government offered in evidence two letters of Dr. Conklin dated July 29, 1937, the first one addressed to "Dear Doctor" and the second one "To the Superintendent," and a third letter from Dr. Conklin to the chief of staff of George Washington University Hospital, dated December 2, 1937, identified as Gov. Exs. 615, 616, and 617, respectively, and Gov. Exs. 351, 365, 383, 384, 392, 442-A, 478 and 479. These letters were objected to on the ground that they were incompetent, irrelevant, and immaterial, and hearsay. These objections were overruled, and exception was allowed.

(Gov. Ex. 615, 616, 617, 351, 365, 383, 384, 392, 442-A, 478 and 479 were received in evidence.)

The sections outlined in red in Gov. Exs. 606, 607 and 608 were offered in evidence. The defendants objected on the ground that the same were incompetent, irrelevant, and immaterial, and hearsay as to all defendants except the American Medical Association. These objections were overruled, an exception was allowed.

(Said sections of Gov. Exs. 606, 607, and 608 were received in evidence.)

Thereupon the following occurred:

Mr. Kelleher: I think I should also ask whether counsel has checked the changes which I suggested, or the corrections which I suggested, as to Exhibits 3, 5, 6, 8, and 102, which are the other proceedings which we offered.

Mr. Richardson: What was the error in those?

Mr. Kelleher: It is in that memorandum. In some instances, the wrong portion was entered in the record, and in other instances only a portion of it was shown. In all instances except one the record clearly shows what our offer was, and in one instance we made another offer. It is all shown in the memorandum which I gave you.

The Court: Have you checked that, gentlemen?

Mr. Burke: I have read the books, and the part that is marked in red pencil is a part of the records of the House of Delegates. That is all I can say about it.

The Court: The question is whether or not they are in evidence, or, if not in evidence, is there any objection to them? I want to get this record closed up.

Mr. Leahy: Can we not have it understood that we have read those sections of those minutes or reports, whatever we wish to call them, of the House of Delegates and we will consider that those marked in red outlines have been offered in evidence and as to them we have no special objection—no objection other than the general objection?

The Court: Very well.

Mr. Allen: If your Honor please, Exhibit 480 was identified by Mr. Sandidge and received in evidence as to certain pages, pages 30 and 31, as the Medical Staff of the hospital. It later appears that those pages do not constitute all the staff of that hospital, and I now offer in addition pages 15, 16, 17 and 18, which constitute the remainder of the Medical Staff.

The Court: Very well. They will be received. I suppose, if that is all it is, there is no objection to it. I have been admitting such exhibits as to all hospitals.

Mr. Leahy: No special objection.

The Government formally rested.

Thereupon each and all of the defendants moved the court as follows:

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc., in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the members of Group Health Association, Inc., in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid



defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc., in the pursuit of their callings."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

To direct the jury in the above entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

And for cause therefore defendants state that the testimony adduced on behalf of the prosecution herein is insufficient to support a verdict of guilty in so far as the above charges are concerned.

Defendants' motions for directed verdicts were granted as to the Harris County Medical Society, Washington Academy of Surgery, Leon Alphonse Martel, and Joseph Rogers Young. As to these defendants a verdict of "not guilty" was directed and returned. Defendants' motions were denied as to the remaining defendants and an exception was allowed these defendants.

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## DEFENDANTS' TESTIMONY IN CHIEF

FRANCIS J. EISENMAN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am superintendent of Garfield Hospital. In accordance with the rules and regulations of the hospital a record is kept of each patient. These records are kept under my supervision. On arrival of a patient a record is kept on the



wall during the period while the patient is in the hospital. When the patient leaves, the record then goes to the record room and the records are made contemporaneously with the treatment of the patient, and reflect the condition of the patient until the patient is discharged from the hospital. Then the record is checked, completed and filed away. I identify as a record kept in the regular course of business of Garfield Hospital the clinical record of Miss Sara Abbott, Def. Ex. 1. I identify as a record kept in the same fashion the clinical record of Miss Elizabeth Tew, Def. Ex. 2.

#### Cross-examination.

By Mr. Lewin:

Dr. Holtzman was the resident in medicine at Garfield a year or two ago. The records show how long the patient was in the hospital. Miss Sara Abbott was in the hospital from January 27, 1938, to February 17, 1938, 21 days. The next record discloses that Miss Tew was in Garfield Hospital from February 26 to February 26, 1938, or a part of a day. Dr. Kreutzberg was the resident in medicine in Garfield Hospital. Dr. Dugan was the assistant resident in surgery at the time Miss Tew was in the hospital.

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B. BRENT SANDIDGE, a witness for the defendants.

#### Direct examination.

By Mr. Leahy:

I am superintendent of Emergency Hospital. The records of Emergency Hospital are kept on the floor where the patient is hospitalized until discharged, then they are sent to the historian for filing in the hospital patients' record room. The records are made contemporaneously and kept up to date as the notations are made by the doctor of the patient's condition. I identify a folder as containing a record which is called a history of a former patient at Emergency Hospital named Sara Abbott, Def. Ex. 3. I identify a card and the paper attached to it, as two records from the hospital emergency department, kept in accordance with the rules and regulations of the hospital, with the entries thereon being made contemporaneously with the

facts they purport to record. The card and record is kept in the emergency department and shows the notations made of the treatment and condition of the patient, the nature of the injury, and certain information obtained prior to the time the patient is hospitalized, if the patient is hospitalized. The emergency room is the accident operating room, and the nurses, doctors and residents are kept there to treat emergency cases that are brought to the hospital when the patients are first brought in, prior to a definite diagnosis, and given emergency treatment, if needed. Any case brought into the emergency room is classified as an emergency case whether the injury is serious or not. If the case goes through the emergency room it is returned simply for record as an emergency case, and, in some instances, the cases are not really what you might call an emergency, but it comes from that department and the record is made there. The records are then filed. I recognize a card dated September 7, 1938, of H. A. Austin, as an official record of the hospital, identified as Def. Ex. 4; the second piece of paper is a formal release, releasing the hospital of any responsibility which may follow and be occasioned by the patient leaving the hospital against the judgment of the doctor. Under the rules and regulations of the hospital in force at the time in which the particular release was executed, if, in the judgment of the doctor and attendants in the emergency room, the patient should remain longer and for some reason does not and leaves on his own accord, the doctor and nurses are instructed to obtain a formal release signed by the patient as a release of the hospital from any responsibility, and that such is the character of this release, and it is one of the hospital records. The name on the card is "Mackowiak." He has been called into selective service in a region near Baltimore, Maryland. The other name is "Gerber," who was the chief resident at the hospital on September 7, 1938, and he is now at Sinai Hospital in New York City. Fry, whose name appears on the record, is still at Emergency. In 1938 the night superintendent, or night office man, was a Mr. McKeever, whose general duties were to room patients, to try to adjust arguments or difficulties, or to call some official at his home for decision, if necessary. On September 7, 1938, the list of the doctors on general and courtesy staffs of the hospitals was kept in the admitting office. The courtesy file has all of the doctors' names listed thereon and indicates the kind of service they are permitted

to perform in the hospital with the approval of the officials of the hospital. Mr. McKeever is not a doctor, but a layman, and is now on the high seas in service of the Naval Reserve.

MILLINA M. REALINI, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am supervisor of medicine and surgery at Sibley Hospital and have been since January 1938. My duties are to make the rounds and visit every patient; watch the nurses and see that they correctly carry out the doctors' orders. I identify Def. Ex. 7 as the admission card made out in my handwriting. As the admission nurse was going off duty when the patient signed in it was up to me to admit the patient, as night supervisor at the time. Def. Ex. 7 is the admission card and one of the records of the hospital. I admitted the patient Charles Hardin, whose name appears on the card. He was admitted the hospital on June 19, 1938, at 11:45 p. m. On admission he was accompanied by his brother-in-law and his wife. He was booked for an operation when the admitting nurse went off, and the admitting nurse told me that Dr. Bachrach was to be the surgeon and that the patient would be in in time as the operation schedule was for 11:45 p. m. The information on the card was obtained by me from the wife of Mr. Hardin. He came into the hospital and was sent to the floor immediately, and since the operation was booked for 11:45 p. m. and he came in at that time he was taken to the floor immediately by me. I then returned to the admitting office and filled out his admission card. On returning, the patient's brother-in-law asked and obtained permission to use the telephone, and called a physician. Mr. Booth personally handed the phone to me and said, "The doctor wants to speak to you." I took the phone and the party on the line said he was Dr. Selders and asked if he could come in and operate on Mr. Hardin. I told Dr. Selders that I was sorry, but that Mr. Hardin already had a doctor, Dr. Bachrach, and then the witness testified as follows:

Q. Tell us now as best you can what was said on the telephone that evening?

A. Well, Dr. Selders wanted to know if he could come in to operate on Mr. Hardin and I said Dr. Bachrach was the attending physician. He told me it was his patient. I said, "Well, I am sorry, Mr. Hardin has a doctor, and there isn't anything I can do about it." He said, "He is my patient," and as I recall now I told him,—he insisted upon coming in. He wanted to come in and operate; and then I told him he didn't have courtesy privileges and I couldn't allow him to come in anyway, because the patient had a doctor, and it was my duty then to tell him that. I asked him if he wanted to speak to Dr. Bachrach, but that I couldn't allow him to come in because the patient was already booked under another doctor, and so he said to me, "You refuse to have me come in?"

I said, "I am not refusing you."

He said, he asked me what authority I had to bar him from the hospital.

I said I had no authority but I was carrying on my duties; that I was always under the impression that when a patient was admitted under one doctor that doctor was to take care of the patient until the doctor gave another doctor permission to take them over.

Q. How long do you think he was on the telephone?

A. Possibly five or ten minutes.

Q. Now, when you asked him if he would like to talk to Dr. Bachrach, what did he say?

A. He ignored the question.

Q. Did the brother-in-law ask Dr. Bachrach to come to the phone?

A. No, sir.

Q. After Dr. Bachrach went upstairs for the operation did you see him again?

A. I did not see him again that night.

Q. Did you receive any instructions from Mr. Hardin, Mrs. Hardin, or the brother-in-law to call Dr. Bachrach to the phone?

A. No, sir.

Q. Do you know whether there was any further conversation there with Dr. Selders that night?

A. Dr. Selders then asked who I was; he asked my name and wanted to know in what capacity I was in Sibley.

Q. Did you tell him?

A. Yes.



I was formerly assistant superintendent at Millford Hospital, at Millford, Massachusetts, and acted as superintendent at that hospital; I worked in various hospitals, in Framingham and Boston, Massachusetts. There is nothing unusual in the regulation of Sibley Hospital requiring that only physicians who are on the staff may come in there and treat their patients, as that was the rule in Millford, Framingham, and Boston. If a doctor didn't have courtesy privileges he could not operate in any hospital that I have worked in. On the particular occasion I made a written report of the Hardin case, dated June 20, 1938, which I identify as Def. Ex. 6. The report was made on the next day. I remember that Dr. Selders was very persistent and was trying to get me to say something. I hadn't heard the name of Dr. Selders in connection with Mr. Hardin before Mr. Hardin's brother-in-law turned the phone over to me that night.

#### Cross-examination.

By Mr. Lewin:

Q. Miss Realini, you knew when this Hardin case came into the Sibley Hospital that it was an acute appendicitis, didn't you?

A. Well, I imagine it was or they wouldn't be operating at night.

Q. Don't the hospital records show that it was an acute appendicitis (handing records to the witness)?

A. Well, there is nothing to indicate that it was an acute appendicitis except that it was done at night, and naturally we don't operate unless it's an emergency.

Q. So you knew and assumed when that case came in that it was an emergency case?

A. Yes, sir.

Q. And didn't you understand the rule of your hospital to be that any physician who was licensed to practice would be permitted in the Sibley Hospital to operate in an emergency case?

A. No, sir. I understood that any doctor that had courtesy privileges at Sibley Hospital was allowed to operate at Sibley Hospital.

Q. Now, after you came back from taking the patient upstairs to the admitting office Mr. Booth came in and asked if he might speak over the telephone; is that right?



A. I don't know what his name was, but it was Mr. Hardin's brother-in-law.

Q. Mr. Hardin's brother-in-law. And you said that he might, and you listened to part of the conversation, didn't you?

A. Well, I didn't really—I couldn't help overhearing it.

Q. Yes. You couldn't help overhearing it. And you knew he was talking to a doctor, didn't you?

A. Yes, sir.

Q. And you knew that he was asking that doctor whether he could come and operate on the patient, didn't you?

A. No, I don't know whether he was or not.

Q. How do you know he was talking to a doctor?

A. Because he addressed him as "Doctor" over the telephone.

Q. Yes. Now, you mean to say you didn't hear him talk about this doctor, whoever he was, coming there to operate?

A. I don't remember.

Q. What?

A. I don't remember the exact conversation.

Q. You don't remember?

A. I knew he was talking to a doctor.

Q. Yes.

A. But I didn't know what the conversation was; I just got parts of the conversation, because I was occupied.

Q. Yes. And then the phone was turned over to you, and you talked to Dr. Selders?

A. Yes, sir.

Q. And you knew, then, from your conversation with Dr. Selders, that Mr. Booth had asked Dr. Selders to come and operate on the patient, didn't you?

A. Well, I imagined that he did.

Q. You imagined that he did?

A. Yes.

Q. So then you knew at that time that the family wanted Dr. Selders to operate, didn't you?

A. Well, I imagined so. He wouldn't have called the doctor if he didn't want him.

Q. Precisely. At the time you talked to Dr. Selders, then, you knew that the family of the sick man upstairs wanted a certain physician, and that was Dr. Selders; isn't that right?

A. Yes.

Q. All right. Now, you had this conversation with Dr. Selders; you reached for a list, didn't you?

A. Yes, I did.

Q. This is the list you reached for?

A. Yes, sir.

Q. Now, I think you told Mr. Leahy that there was nothing unusual in your procedure that night. Did you have a list like this for all the other doctors?

A. I didn't remember it at the time.

Q. You mean when you answered Mr. Leahy's question you didn't remember this list?

A. No. I remembered it after he showed me my written statement.

Q. Well, there was something a little unusual about the way you treated Dr. Selders, wasn't there?

A. I wouldn't say so.

Q. Was that the ordinary practice for you to reach for a list like this?

A. Not ordinarily.

Q. Did you have any other list like this in the office?

A. Not like that.

Q. Wasn't this the list that President Taylor had required you to keep there for the Group Health doctors?

A. I don't know.

Q. You don't know. Don't you know that that's a list of the Group Health doctors?

A. As I read (present tense) it, yes, and I signed it, but Dr. Taylor didn't say anything to me about it.

Q. Dr. Taylor didn't say anything to you about it?

A. No.

Q. Who did tell you to sign it?

A. I don't remember.

Q. It was someone in authority at the hospital told you to sign it, didn't they?

A. Possibly.

Q. They told you to keep it there in the admitting office?

A. I am not in charge of the admitting office.

Q. That's all right. They told you to keep it there in the admitting office and use it when you were in charge of it?

A. They didn't tell me to keep it in there.

Q. Now, Miss Realini—

A. It was in the admitting office.

Q. It was in the admitting office. And you were supposed to use it, weren't you?

A. Naturally, I—where I signed my name.

Q. Yes. Naturally you were supposed to use it. And as a matter of fact you did use it in connection with Group Health doctors?

A. I used it that night.

Q. Yes. You knew that whenever a Group Health doctor called up and identified himself you were to reach for this list and deny him the privileges of the hospital, even in emergency cases; isn't that right?

A. No, I don't think so.

Q. Well, now, isn't that true? What did the list mean to you? What does it say?

A. It says "Group Health Association," and just a list of the doctors.

Q. Let the jury hear it. "Group Health Association, H. O. L. C."

A. And it—

Q. And the list of the Group Health doctors.

A. Dr. Henry Brown, Dr. Raymond Selders, Dr. Alexander.

Q. No. Dr. Allan Lee.

A. Oh, Allan Lee; Dr. Edmund Wells, Dr. Stephen Hurlburt, and Dr. M.—

Q. Scandiffio?

A. Scandiffio.

Q. Yes. Did you know any of those doctors?

A. No, sir.

Q. Did you know Dr. Scandiffio?

A. No, sir.

Q. Hadn't he had privileges at your hospital for some time?

A. I don't remember, don't ever recall him.

Q. You don't recall him?

A. No.

Q. Now, then, read what was just below their names on the list: "These doctors are not to be allowed in at any time"; isn't that correct?

A. That's right.

Q. They were your instructions, were they not?

A. Naturally, I signed my name to them.

Q. Yes. They were the instructions to the entire admitting office, of all these people: L. Welch, Benlah Mumford, H. R. Dutton, L. A. Wood, J. Jenson, and M. M. Realini?

A. Well, Miss Welch is admittance nurse.

Q. Yes?

A. And so is Mrs. Mumford.

Q. Yes?

A. And Miss Dutton is Director of Student Health.

Q. Yes?

A. And she relieves in the office?

Q. She relieves in the office, the admitting office?

A. Yes. Miss Wood is one of the supervisors of medicine and surgery.

Q. Yes?

A. And Miss Jenson at the time was one of the supervisors of medicine and surgery.

Q. She relieves in the office too?

A. She has resigned since.

Q. She has resigned. But at that time?

A. Yes, sir.

Q. And you?

A. Yes, sir.

Q. That covered the entire admitting office staff, didn't it?

A. Yes, sir.

Q. So there was complete coverage there; am I right?

A. Well, there was—there's another supervisor of medicine and surgery there.

Q. At that time?

A. Yes.

Q. But with the exception of that one, the entire admitting office was covered, and they all had those binding instructions; isn't that right, and were told to use them?

A. We were told to sign the paper.

Q. And it was by reason of this paper that you refused to admit Dr. Selders, and told him so that night?

A. Well, first, because he didn't have courtesy privileges.

Q. Well, now, these, this—

. . . . .

Q. First, because he didn't have courtesy privileges. Did you look at the courtesy list at that time, or did you look at this list?

A. I looked at the courtesy list.

Q. You looked at the courtesy list as well as this?

A. That's right.

Q. And if he had been on the courtesy list would you have let him in notwithstanding these instructions?

A. Well, I would, yes.

Q. You would have let him in even though you had instructions, which you were supposed to sign and follow, that he was not to be admitted in at any time?

A. Yes, if he had courtesy privileges.

Q. Now, as a matter of fact, Miss Realini, don't you know that Dr. Scandiffio was on the courtesy list at that time.

A. I didn't know it.

Q. Well, when you looked at the courtesy list did you find Dr. Scandiffio's name?

A. Well, I wasn't looking for Dr. Scandiffio's name.

Q. Well, that's all right. Isn't it your testimony that Dr. Scandiffio at the time this happened, at the time this list was prepared, had courtesy staff privileges?

A. No, I don't know whether he had courtesy staff privileges.

Q. And it is your testimony that if Dr. Selders' name had appeared on the courtesy staff privileges you would have overridden these instructions and admitted him?

A. Well, I wouldn't have consulted that.

Q. You would not have consulted this?

A. No, after I looked.

Q. Weren't you required to consult this in the case of all Group Health doctors, whether they had courtesy privileges or not?

A. I don't remember whether I was or not.

Q. Do you mean to say that you got up from the telephone and left the conversation and went over and examined the entire courtesy staff list before you finally replied to Dr. Selders?

A. I don't have to get up and examine it; it's right there at the desk.

Q. How long is the courtesy staff list at Sibley Hospital?

A. Well, it is quite long; I couldn't say offhand.

. . . . .

Q. It is quite long, and you kept Dr. Selders waiting while you went down that whole list of names to find out whether he was on the courtesy staff?

A. I just went through the S's.



Q. You just went through the S's. Is it kept in a card index?

A. Yes, sir. And they are accessible.

Q. And you turned to the card index and ran through those cards?

A. Yes, sir.

Q. And you did that notwithstanding this paper which settled the whole problem for you?

A. Well, I didn't think of that paper at the time.

Q. Well, didn't you testify that you reached for this paper?

A. Yes, I did.

Q. Isn't that the list that you reached for?

A. I reached for it after.

Q. In the statement and report that you made to Dr. Taylor isn't this the list that you were referring to?

A. Yes.

Q. That you said you reached for?

A. Yes, that is the list.

Q. When you testified before the Grand Jury of the United States didn't you identify this list?

A. Yes, sir.

Q. And tell the Grand Jury that this was the list you reached for, and it was on the basis of this list that you excluded Selders?

. . . . .

Q. Is that right? Is that what you told the Grand Jury of the United States?

A. I don't remember.

Q. You don't remember that?

A. No.

Q. Well, now, after you talked with Dr. Selders that first time, Miss Realini, Mr. Booth talked to him again, didn't he, before the receiver was hung up? Or did you hang up the receiver?

A. I don't quite remember, but I know he talked to him a second time.

Q. Yes.

A. But I think it was a separate call.

Q. Yes. And wasn't that immediately afterward, the phone rang again?

A. Yes, while I was in the admitting office. I don't know how soon, but it was while I was in the admitting office.

Q. While you were still in the admitting office?

A. Yes, sir.

Q. And you would say it was a very short time elapsed before the phone rang again; and it was Selders talking to Booth again; is that right?

A. Yes, sir.

Q. And then he talked to you again?

A. No, I don't believe the doctor talked to me again.

Q. Didn't he talk to you any more?

A. No, sir.

Q. After he had the first conversation. After you overheard this second conversation you knew that Mr. Booth was talking with Dr. Selders on another conversation immediately afterward?

A. Pardon me.

Q. I say, you knew that shortly after that first conversation Selders called again and talked to Booth?

A. Yes.

Q. And can't you recollect that you also talked to him on a second occasion or that time?

A. I don't believe I did.

Q. You don't believe you did?

A. No, I don't think.

Q. Would it refresh your recollection if I called your attention to your Grand Jury testimony, do you think? Didn't you say this, in answer to the question put to you:

"Well, what happened after the conversation ended?

"Answer: Well, I think I received another call from Dr. Selders. When I picked up the receiver, he was on the line again. I think he asked me again, so I refused to let him come into the hospital."

Did you say that?

A. Possibly I did. I know I talked with him. Naturally I would have to get the call, and since he wanted to speak to Mr. Hardin's brother-in-law I would have to talk with him first.

Q. Do you remember this testimony before the Grand Jury? You were asked:

"After the remarks between yourself and Dr. Selders in this second conversation, about which you have just testified, what happened next?"

And your answer:

"Well, I don't think that conversation was very long, because I believe I told Dr. Selders that the patient by this time had already been operated on,"—

A. Yes.

Q. —"or words to that effect."

A. I remember that.

Q. Do you recall that now?

A. Yes, I do.

Q. Now, do you remember that you didn't know whether the patient had been operated on or not? Isn't that right?

A. Well, I assume that the patient must have been operated on. I couldn't say definitely, but the patient must have been up in the operating room.

Q. Yes, but you told Dr. Selders that the patient by that time had been operated on, didn't you?

A. I don't remember if I said that the patient had been operated on.

Q. Well, wasn't that your testimony before the Grand Jury? Wouldn't you say this was correct: "because I believe I told Dr. Selders that the patient by this time had been operated on, or words to that effect"?

A. I said I believed. I didn't say that the patient was. I said I believed.

Q. Well, you didn't say that to the Grand Jury. You said "because I believe I told Dr. Selders that the patient by this time had already been operated on, or words to that effect." Didn't you tell Dr. Selders that?

A. Because the patient was booked for 11:45.

Q. Well, you were trying to discourage Dr. Selders from coming to the hospital, weren't you?

A. I was not.

Q. What was your purpose in telling him that the patient had already been operated on, or that you believed the patient had already been operated on?

A. My purpose?

Q. Yes. Why did you tell Dr. Selders that?

A. Well, because the patient was being operated on.

Q. Well, why did you tell Dr. Selders that? Wasn't it to discourage him from coming and taking the case?

A. No, because the patient already had a doctor, and that's where my duties end.

Q. Well, why did you tell Dr. Selders that the patient had been operated on, or that you believed that the patient had been operated on?

A. I don't know why I told him.

Q. You don't know why?

A. Because I believed that the patient had been operated.

Q. Especially when that was resting solely on an assumption on your part; am I right?

The Court: I think that is argumentative. I will sustain an objection to it. That is quite argumentative.

By Mr. Lewin:

Q. Well, now, had you left the admitting office between those two calls?

A. No, I hadn't.

Q. Had anybody told you that the patient had been operated on?

A. No.

Q. You simply assumed that it had?

A. Yes.

Q. That the patient had been?

A. Yes, sir.

Q. And yet you told Dr. Selders that the patient had been operated on?

Mr. Leahy: She said that she believed he had been.

The Witness: I said I believed it. I said I believed.

By Mr. Lewin:

Q. Well, you are not quite sure about that?

A. I said I understand that the patient had been operated on.

Q. And you don't know why you told Dr. Selders that?

A. I don't.

Mr. Leahy: She has answered: because she believed the patient was being operated on.

Mr. Lewin: She hasn't done anything of the sort. She said she couldn't explain.

The Court: I think you have been pretty thoroughly over that, Mr. Lewin.

By Mr. Lewin:

Q. Did you discuss with any member of the patient's family who was there the right to have Dr. Selders perform the operation?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Don't you remember discussing it with Mr. Booth and Mrs. Hardin, and their wanting Dr. Selders?

A. No, I didn't discuss—I didn't discuss with Mrs. Booth, because I don't remember.

Q. Mrs. Hardin.

A. Mrs. Hardin, I mean.

Q. Was Mrs. Hardin there at some time during the conversation?

A. She didn't come in the admitting office.

Q. Didn't she come in that night?

A. I don't know if she came in there or not, because she was upstairs afterward to see the patient.

Q. Did she come in later?

A. I believe she came in with the patient, but I didn't see her.

Q. You are clear, through,—

A. At least, I don't remember. Possibly she was there, but I don't remember.

Q. You do clearly remember, though, that Mr. Booth wanted Dr. Selders?

A. I clearly remember that Mr. Booth was in the office and wanted to use the telephone. That is very clear in my mind.

Q. You knew he wanted to have Dr. Selders operate, didn't you?

A. Not before he talked—not before I talked with Dr. Selders.

Q. Not before you talked with Dr. Selders?

A. No, sir.

Q. But after that you did, didn't you?

A. When I talked with Dr. Selders.

Q. Yes.

A. Doctor Selders told me.

Q. Yes. Well, then you must have known that Dr. Bachrach had no authority to go ahead with the operation, didn't you?

A. Well, that isn't up to me. I'm the nurse. I am not a doctor.

Q. At the time you were talking to Dr. Selders you knew that Mr. Booth didn't want Dr. Bachrach but wanted Dr. Selders; isn't that right?



A. Well, I knew that Mr. Booth wanted Dr. Selders, yes.

Q. Yes. And yet you gave Dr. Selders, as one of your excuses for not letting him there, that it was Dr. Bachrach's patient?

A. That's right.

Q. Which you must have known that it wasn't Dr. Bachrach's patient at that time?

A. The patient was admitted under Dr. Bachrach's—

Mr. Leahy (interposing): Isn't that argumentative.

The Court: Yes, Mr. Lewin.

The Witness. The doctor—the patient was admitted under Dr. Bachrach's name.

By Mr. Lewin:

Q. You knew that Dr. Bachrach's name was on the slip?

A. He didn't want—the Dr. Bachrach was booked—the operation was booked under Dr. Bachrach.

Q. Yes. If Dr. Bachrach's name had not appeared upon the admitting card, would you have admitted Dr. Selders?

A. Possibly I would have.

Q. You would have?

A. Possibly.

Q. Notwithstanding the list that you reached for which said that Dr. Selders was not to be allowed in at any time?

A. I don't know what I would have done if Dr. Bachrach's name wasn't on the admitting—wasn't booked for the operation.

Q. Wasn't this the real reason that you refused Dr. Selders, and not the fact that Dr. Bachrach's name was on the card (indicating United States Exhibit 496)?

A. Primarily it was Dr. Bachrach's name, and that's why I refused him, primarily.

Q. Weren't you asked this question before the Grand Jury:

"Is this not the reason: that when you saw this list, you knew that under no conditions could Dr. Selders be admitted to the hospital, regardless of whether the patient had another physician attending him at the time or not?"

And your answer, "I suppose underneath it all I felt that way."

Did you give that testimony?

A. Well, if it's there I must have given it.

Q. And is it correct?

A. I don't know whether it is or not.

Q. What? You don't know? Did you ever see this paper or the original of it (handing the witness United States Exhibit 491)?

A. No, I don't ever remember.

Q. Don't remember that?

A. No, I don't ever.

Mr. Leahy: Is that an identification of it?

Mr. Lewin: Yes, 491.

Mr. Kelleher: It is in evidence.

Mr. Lewin: I have no further questions. Thank you.

Redirect examination.

By Mr. Leahy:

The list, Gov. Ex. 496, is in the handwriting of Mrs. Mumford and not of Dr. Taylor. Dr. Taylor never said anything to me about anything contained in the list. Mrs. Mumford was admitting nurse at that time. When a doctor seeks to treat a patient in a hospital the courtesy list is checked and if he hasn't courtesy privileges he is told that he has no such privileges. In my report to the hospital on June 20 I mentioned the fact that I looked at the list, Gov. Ex. 496. As I reached for the phone it occurred to me to reach for the slip. When the admission record was made on Mr. Hardin's admission, no mention was made of the fact that he was a Group Health patient. His wife said nothing about it.

The defendants offered in evidence Def. Ex. 6 and 7. The Government objected to Def. Ex. 6 on the ground that it was merely a memorandum and could only be used to refresh the recollection of the witness, and was not admissible in itself. This objection was sustained to Def. Ex. 6 and an exception was noted on behalf of the defendants.

Def. Ex. 6\* which was rejected reads as follows:

"June 20, 1938.

Report for Doctor Taylor:

Sunday, June 19, about one-half hour after Mr. Hardin was admitted to 201 Main, his brother-in-law asked me if

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\* The witness was shown defendants' Exhibit 6 and made references thereto on direct examination.

he could use the telephone in the admitting office as he wanted to make an important call and didn't have any money. He said that the call could be charged to Mr. Hardin, for whom the call was being made. I told him in that case it was all right to use the phone.

I had no idea who he was calling, however, while he was talking I gathered from parts of the conversation that he was speaking to a physician. Presently, he turned to me and said that Dr. Selders was on the line and wanted to talk to the nurse in charge. As I reached for the phone, it occurred to me to reach for the slip which had the names of the H. O. L. C. doctors on it,—the name seemed familiar—and I found that Dr. Selders' name was on it. In the meantime, Dr. Selders told me who he was and wanted to know if he could come in to operate on Mr. Hardin. I told him that Dr. Bachrach had booked the operation and that he was in the hospital at the time. Dr. Selders then said that he should operate on Mr. Hardin instead of Dr. Bachrach. I replied that Mr. Hardin was referred to the Hospital by Dr. Bachrach and that there wasn't anything I could do about it and since he (Dr. Selders) did not have a courtesy privilege that he could not operate. He became very angry and wanted to know what right I had to bar him from operating and asked me for my name and position. I gave him my name and told him I was the night supervisor and that I didn't want to seem discourteous but that all hospitals, including Sibley Hospital had rules by which the supervisors or whoever was in charge had to abide by. I asked him if he wanted to speak to Dr. Bachrach, the attending surgeon, or to the resident physician and he ignored my question by answering. 'So you say that I have no right to operate on this man.' I replied, 'Since you haven't a courtesy privilege here, Doctor, naturally you can't operate on anyone in this hospital.'

He asked me if there were any other doctors that were barred and who made the rules. I told him that it was a rule of the hospital, as I had told him previously, and also that I had worked in other hospitals outside of the District and I always found that all hospitals had rules and that I abided by them. It occurred to me then that he was trying to get information about the circumstances of the case of which I could not understand, so I tried to end the conversation as quickly as I could without being rude. He persisted in asking me if I had any names of other doctors

that could not operate here. I told him it was unethical for me to answer such a question and the only thing I could say was that he could not operate. He replied that the reason he asked that question was that he wanted to know if he could send in another doctor to operate. I reminded him that Dr. Bachrach had booked the patient for operation and that I thought by this time he had already started to operate. At this point, he terminated the conversation saying that he'd see about the whole incident.

I had no sooner hung up the receiver when the phone rang and Dr. Selders asked if he could speak to Mr. Hardin's brother-in-law. I called Mr. Hardin's brother-in-law to the phone. They had a lengthy conversation, but I can't recall what was said.

Millina M. Realini, R. N."

Def. Ex. 7 was received in evidence and read to the jury as follows:

"In case of emergency call Mrs. Helen Hardin.

Physician. Dr. Bachrach, Surg.

Nature of case.

Responsibility for the account. Charles G. Hardin, Jr.

Relationship to the patient. Wife.

Giving the address as 215 North Piedmont Street, Arlington, Virginia, the telephone number, or 1419 H Street, N. W., and the telephone number there; with Miss Realini's name on the back."

DR. LEE SOLET, a witness for the defendants.

Direct examination.

By Mr. Leahy:

My office is in Arlington, Virginia, where I have been for over three years. I graduated from the Middlesex College of Medicine and Surgery in Boston in 1933, took my internship at Unity Hospital in Brooklyn, New York, and a residency at Womens and Childrens Hospital, Toledo, Ohio. On June 19, 1938, I was called in to visit a Mr. Charles Hardin, at 9:45 p. m. I saw Mr. Hardin in the presence of Mr. Hardin's wife. On examining Mr. Hardin I found that he looked quite well, except that he complained of having had a pain the day before, and had a pain that



day, and was a little disturbed, although he said he felt quite well. The physical examination revealed no temperature, no nausea or vomiting, but the patient complained of a pain over the right side of his abdomen that looked suspiciously like a possible appendix. I advised the patient to call in someone to verify that. I asked the patient if he had any particular physician and he replied, "No, you are the doctor," so I called in Dr. Bachrach, who specializes in surgery. Dr. Bachrach came over to Mr. Hardin's home in Arlington, Virginia, at approximately 10:35 or 10:40. He asked the patient a number of questions, made an examination of the patient, and stated he was of the opinion that he had appendicitis, and suggested that the patient go to the hospital. Sibley Hospital was called and arrangements were made for Mr. Hardin's admittance. Arrangements were made for Dr. Bachrach to operate on Mr. Hardin. I, with Mr. and Mrs. Hardin in my car, and Dr. Bachrach following in his car, proceeded to Sibley Hospital and arrived in 30 minutes. We arrived at Sibley Hospital at 11:15 or 11:20 p. m., where we were met by Mrs. Hardin's brother. Mrs. Hardin and her brother went into the admitting office and made arrangements for the admission of Mr. Hardin, while I remained outside talking to the patient, who was in a wheel chair. I identify Def. Ex. 7 as the admission record of Mr. Hardin. Mrs. Hardin and her brother were in the admitting office about 10 minutes. Mr. Hardin didn't go into the admitting office. Mr. Hardin was assigned a room and I went with Dr. Bachrach to the operating room to prepare for the operation. At 12:25 a. m. Mr. Hardin was operated on by Dr. Bachrach, assisted by the resident and the internes of the hospital, while I observed the operation. A time was required prior to the operation to prepare the patient for it and for the doctor to prepare for the operation. From the time we doctors went upstairs until the operation we were engaged in changing our clothes, putting on gowns, and scrubbing. Nothing occurred—Dr. Bachrach just operated on the patient. After Dr. Bachrach operated I saw the patient until he left the hospital five days later. The patient had a gangrenous appendix which was removed.

I heard the name of Dr. Selders for the first time after Mrs. Hardin and her brother came out of the admitting room and then I just happened to overhear that name in conversation. The name of Dr. Selders had not been sug-



gested to me at any time prior to my coming to the hospital; neither had Group Health been mentioned. When I suggested a surgeon or doctor at the home of Mr. Hardin and asked him which surgeon Mr. Hardin preferred, he merely said, "You are the doctor," so I immediately called Dr. Bachrach.

### Cross-examination.

By Mr. Kelleher:

Mr. Hardin was sick when I saw him. It turned out that he had a gangrenous appendix, which is a pretty serious matter. Dr. Bachrach diagnosed Mr. Hardin's condition as acute appendicitis in my presence. It was necessary, in my opinion, to operate on the patient that night. The operation takes place whether in the night or in the day when the patient decides to go to the hospital. Dr. Bachrach recommended an operation that night and verified my diagnosis of a possible appendicitis. I did not diagnose it as acute, but Dr. Bachrach did. The following day I saw the patient and I saw him every day and removed the sutures when the wound healed. I had privileges at Sibley Hospital and have had them since 1938. The arrangements for a surgeon were made with Mr. Hardin and not Mrs. Hardin. After mentioning several doctors I suggested Dr. Bachrach to the patient. Mrs. Hardin didn't request me to name them. I don't recall either Mr. or Mrs. Hardin ever telling me that evening that they were members of Group Health. The question of whether G. H. A. doctors could operate in local hospitals didn't come up in the case. I didn't discuss Group Health in the presence of Dr. Bachrach and no mention was made of Group Health. Mr. Booth, the brother-in-law of Mr. Hardin, never spoke to me at the hospital that evening and didn't speak to Dr. Bachrach in my presence. I heard a reference to Dr. Selders in the admitting room between Mrs. Hardin and Mr. Booth and Dr. Bachrach probably was around there, but that is the only mention I heard of Dr. Selders. All I heard was that Dr. Bachrach was competent and to go on with the operation, and the fact that Dr. Selders couldn't operate at the hospital. The conversation was between Mrs. Hardin, Mr. Booth, and Dr. Bachrach, as I was with the patient at the elevator. I am a member of the American Medical Association.

ISABELLE M. KANFOUSH, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a registered nurse. I am employed as a nurse at Walter Reed General Hospital. In January, 1938, and until June, 1939, I was a general duty nurse at Emergency Hospital. The duties of a general duty nurse depend on the part of the hospital to which the nurse is assigned; it is usually bedside nursing. For about two months I worked in the emergency room at Emergency Hospital, which deals with emergencies which come in from the outside. Emergencies in this sense mean accidents or acute abdominal cases, or anything of that kind. The chief duties of an emergency nurse are to take care of the patients coming in that have been injured in automobile cases or who have been cut or injured in any other way. I recognize Def. Ex. 4 as my name appears on the piece of paper attached thereto. The exhibit concerns the case of Harriet A. Austin. I was on duty on September 7, 1938, and I remember Mrs. Austin coming into the emergency room that day, as I was the nurse in charge and took care of the case. The patient was brought in in an Emergency Hospital ambulance at 5:25 p. m., the call for an ambulance was received at 5:19 p. m., the patient was received in the ambulance in the vicinity of 11th and Pennsylvania Avenue. The call for an ambulance was answered immediately and Dr. Mackowiak went out on the ambulance call. The driver was named Curtis. The patient was brought in to the emergency room. The information on the card is written in my handwriting and was obtained from the patient, Harriet A. Austin. I was present in the emergency room when Mrs. Austin was brought in. She had no external injuries, her general condition was good, she had no cuts or bruises except on the right hip and a bruise on her right elbow. The patient was undressed, examined thoroughly from head to foot, and was given a medication known as 2-2-10, being two drams of bisodol, two drams of lactopepsin, and ten minims of tincture of belladonna. The emergency room is a large room where there are two beds and a rest room. Mrs. Austin was admitted, taken to the rest room, undressed and put to bed. I was present when the request was made by some lady—I don't know whether it was a daughter or sister of the patient—for a doctor. The

lady asked me if she could have Dr. Selders come in and see her mother and I told her that Dr. Selders was not on the courtesy list of the hospital but that he could and he would be called and asked to come into the hospital and talk to her and the patient, and see if they could arrange to have one of the staff men take care of the patient. The patient herself refused to have the doctor called and decided that she was going to go somewhere else. The patient made that statement herself. The patient wanted to leave the hospital, asked to leave, but the rule is that no patient whom the doctors think should stay in the hospital is permitted to leave unless he or she signs a release, and that is what she was asked to do, and she signed a release. I recognize the signature of Mrs. Austin on the release; and the signature of Dr. Harris, an interne, in the emergency room. Everything was done for Mrs. Austin in the emergency room that night that could have been done under the circumstances. When the patient left the hospital she walked out.

Def. Ex. 4 (case of Harriett A. Austin) was received in evidence and read to the jury as follows:

"Call received 5:19 p. m. By Kanfoush. How received: Peoples Drugstore.

Call answered 5:15 p. m. By Dr. Mackowiak. Driver Curtis.

Time returned 5:28 p. m. Disposition of case Bro. in. Name Harriet A. Austin. Address 1543 44th-St. N. W. Brought in E. H. Amb. Date 9-7-38. Time 5:28 p. m. Dr. Mackowiak-Gerber-Fry. Nurse I. Kanfoush. Diagnosis, Pos. fract. lt. hip.

Disposition of case. Refused hospit. Signed release.

Remarks. Pt. states a few min. ago at 11th and Pa. Ave. N. W. she was crossing the street & was hit by a car driven by unknown party. Injury to left hip and right elbow."

The treatment is that '2-2-10.' I will not try to repeat it because I cannot.

By Mr. Leahy:

Q. Would you tell us what this "P. N." on the bottom is?

A. Yes. In all accident cases we notify the police. It just so happened that this case was in the First Precinct. That means Police Notified.

